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Principles of Dharmasastra

by Sri B. N. CHOBE

Senior Advocate, Supreme Court of India (Hyderabad—2)

FOREWORD by *Hon'ble Sri Justice P. N. Sapru.*

I have read it with very great interest. The book is very instructive and sheds light on many obscure questions on the sources of Hindu Law. It shows wide range and depth of your studies of the Vedas and Shastras, and the book is veritable mine of information on questions hitherto unexplored.

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Hon'ble Chief Justice P. V. Rajamannar.

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v.

COMMISSIONER, EXCESS PROFITS TAX .. RESPONDENT

Excess Profits Tax Act, Sch. 1, r. 1 (x)—Computation of profits—Agreement to pay a share in profits to a competitor to prevent him from bidding at the auction—Assessees' claim for deduction—Nature of the expenditure—Capital and revenue expenditures defined and distinguished.

The petitioners were able to obtain a contract in toddy business by agreeing to pay 3 annas share in the profits of the business to one R, a rival contractor, in order to keep him away from competing with the petitioners in the auction. Before the E.P.T. authorities, the petitioners-assessees contended, among other things, that in assessing the excess profits tax on the toddy business, the share of the profits to be paid to R should be given deduction, but the E.P.T. authorities, including the Commissioner, negatived the plea of the assessees. Ultimately, the High Court, under s. 48 (3) of the Excess Profits Tax Act directed the Commissioner to state a case so far as the question as to whether the assessees were entitled to the deduction of the amount paid to R, in computing the profits The Commissioner, while stating the case, contended that the payment to the rival contractor with a view to prevent him from bidding at the auction was a capital expenditure, the money so paid not being for the purpose of working the contract but for obtaining it, and that it cannot be deemed to be an expenditure laid out for the purposes of the business.

Held, that in order to determine whether the assessees are entitled to the deduction claimed by them, it is necessary to consider the exact nature of the expenditure incurred by them. If the expenditure incurred is a revenue expenditure. it will be permissible to deduct as an expense, but if it is an expenditure of a capital nature, then it is inadmissible. It is to be noted in this connection that an item of expenditure, though wholly and exclusively laid out for purposes of business, would nevertheless be inadmissible as an allowance, if it is of a capital nature.

The next point for consideration is, what is the test that is usually applied in order to ascertain whether an expenditure is of a capital nature or of a revenue nature? From a commercial or accountancy point of view, the term 'capital' connotes an asset which is utilized for earning profits. Accordingly, an expenditure which results in the acquisition of a permanent asset or assets with a view to its being used in the business for earning revenue is a capital expenditure and any amount expended for increasing that asset or for adding to it in order to increase the capacity of the asset to earn more profits or reducing the cost of production is treated as capital expenditure. Similarly, all establishment and other expenses such as those incurred by way of repairs, replacements, renewals of existing assets which do not in any way

*Reference Nos. 334 and 335/c of 1359 F. 11th March 1953.

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add to their earning capacity but simply serve to maintain the equipment in an efficient working order and generally all such expenses which are incurred in the conduct and administration of the business are properly chargeable to revenue expenditure.

An expenditure is of a capital nature if it is made for bringing into existence 'an asset or an advantage', though it is not necessary that it should have this result. Further, the asset or advantage should be for the enduring benefit of the trade. Whether an expenditure is of an enduring benefit to the trade depends upon the answer to the question is it an expenditure laid-out as *part of the process of profit earning*? or is it an expenditure necessary for the *acquisition* of the property or of rights of a permanent character, the possession of which is a condition of carrying on its trade at all? In the former case, it is a revenue expenditure and in the latter case it is a capital expenditure. No doubt, it is not possible to lay down any hard and fast rule for distinguishing a capital expenditure from a revenue expenditure. But it is not safe to determine the nature of an expenditure for the purposes of fiscal laws on the prudence and experience of merchants, or on the basis of the entries found in the account books or in the balance sheet.

An expenditure incurred to shut off a competitor would be a capital expenditure if the expenditure is made once and for all and with a view to bringing into existence an asset or advantage for the enduring benefit of the trade. But if the expenditure is of a recurring nature arising in the course of the trade, incurred only with a view to enhance the profits, it would be considered as a revenue expenditure.

In the light of the principles enunciated above, the agreement to give 3 annas share of the profits to R, in order to stop him from competing at the auction, was not an expenditure laid out as part of the process of profit earning, but it was a necessary expenditure for the acquisition of the business from which profits were expected. In other words, the amount agreed to be paid was not necessary for the carrying out of the contract but was necessary to obtain the contract itself, i.e., for the acquisition of the initial asset or advantage which endured as long as the contract or the earning asset or the advantage lasted. Further, R is entitled to the share only when the profits come into existence. But once profits come into existence, they attract tax at that point since the revenue is not concerned with the subsequent application of the profits. Thus, it is clear that the payment to R is in the nature of a capital expenditure and is not an admissible deduction under the Act.

John Smith and Sons v. *Moore, 1921 (2) Appeal Cases 13*

British Insulated and Halsby Cables, Ltd., v. *Atherton, 1926 Appeal Cases 205.*

Anglo Persian Oil Co., v. *Dale, 1932(1) K.B. 124*

Robert Addie Sons Collieries Ltd., v. *Inland Revenue, 8 Tax Cases 671*

Tata Hydro-electric Agencies Ltd., v. *C.I.T., 1937 I.T.R. 202*

Associated Portland Cement Manufacturers Ltd., v. *Commissioner of Inland Revenue, 27 T.C. 111*

relied on.

N. Narasimha Iyengar, Advocate for Petitioners.

C. Rangachari, Advocate for Respondent.

ORDER

P. JAGANMOHAN REDDY, J.— The petitioners carry on the business of excise contractors in the sale of liquor and toddy. In compliance with a notice under sub-s. (1) of s. 13 the assessees declared profits of Rs. 52,728 and Rs. 39,976 for the second and third chargeable accounting periods respectively. It was contended before the Excess Profits Tax Officer that the business in liquor was carried on by the firm consisting of two partners, namely, D. D. Italia and Bankatlal and the business in toddy was carried on by another firm consisting of three partners, namely, the said two persons along with one Ramagoud. It was stated that, though Ramagoud did not invest any capital, he was taken as a partner and given three annas share as a consideration for his not bidding at the auction of the toddy shops. The assessees, therefore, claim that the toddy business was separate from that of liquor and that the two firms are different for the purpose of assessment.

During the course of the assessment proceedings the Excess Profits Tax Officer found that there was no documentary evidence in support of the claim that the toddy business was carried on by the alleged partnership consisting of the three partners referred to above. He accordingly held that the liquor and toddy businesses belong to one and the same firm consisting of the petitioners and assessed the entire profits derived from both liquor and toddy contracts. The said officer further treated the payment of three annas share of profit to Ramagoud as capital expenditure and after disallowing some inadmissible amounts computed profits at Rs. 77,926 and Rs. 59,115 for the 2nd and 3rd chargeable accounting periods respectively. On appeal, the Deputy Commissioner upheld the finding of the Excess Profits Tax Officer, but however reduced the assessments by Rs. 9,276 and Rs. 8,460 respectively for the 2nd and 3rd chargeable accounting periods due to certain inadmissible items added by the Excess Profits Tax Officer. Against the order of the Deputy Commissioner, the petitioners filed a petition before the Commissioner, under s. 20 and sub-s. (2) of s. 48 of the Excess Profits Tax Act contending *inter alia*, (i) that the business in toddy should be treated as a separate business belonging to the firm of D.D. Italia, Bankatlal and Ramagoud and should be separately assessed; (ii) in the alternative, payment of 3/16th share of profit to Ramagoud should be allowed as business expenditure; and (iii) that the estimated sum of Rs. 5,000 and Rs. 6,000 claimed as expenses of Motor Lorry disallowed by the E.P.T. authorities in respect of the 2nd and 3rd chargeable

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accounting periods respectively should be allowed.

One of the partners, D.D. Italia, made a statement on 11-9-1946 to the effect that Ramagoud was taken as a partner only in order to keep him from competing with them and that the said Ramagoud neither contributed any capital nor labour. The Commissioner of Excess Profits Tax refused to state a case on the ground that the answer to each of the three questions cannot but be a finding of fact pure and simple and that no question of law arose. The assessee thereafter filed these two petitions under sub-s. (3) of s. 48 of the Excess Profits Tax Act relating to the 2nd and 3rd chargeable accounting periods respectively for directing the Commissioner to state a case on the said three questions of law. A Bench of this High Court had, however, directed the Commissioner on the 4th November, 1952 to state a case only on the second of the aforesaid three questions, viz.,

> "Whether the assessee is legally entitled to the deduction which he has claimed under the Excess Profits Tax Act."

In compliance with the aforesaid order the Commissioner after setting out the facts as aforesaid contends that the payment made by the assessee to a rival contractor with a view to prevent him from bidding at the auction is a capital expenditure, the money so paid, not being for the purpose of working the contract but for obtaining it, cannot be deemed to be an expenditure laid out for the purposes of the business.

The soundness of this contention depends upon the determination of the exact nature of the expenditure that has been incurred by the assessee when he agreed to pay to Ramagoud three annas share of the profits derived from the toddy contracts. If the expenditure so incurred is a revenue expenditure, it will be permissible to deduct it as an expense, but if it is an expenditure of a capital nature, then it is inadmissible. It may here be observed that an item of expenditure, though wholly and exclusively laid out for purposes of business, would nevertheless be inadmissible as an allowance if it is of a capital nature. The E.P.T. Act has nowhere defined capital expenditure. The use of the words "in the nature of capital expenditure" which occur in rule 1 (1) (x) of schedule I to the E.P.T. Act does not assist us in the ascertainment of the nature of the expenditure.

Generally speaking from a commercial or accountancy point of view the term "capital" connotes an asset which is utilised for earning profits. Accordingly, all expenditure which results in the acquisition of a permanent asset or assets with a view to its being used in the business for earning revenue is capital expenditure and any amount expended for increasing that asset or for adding to it in order to increase the capacity of the asset to earn more profits or reducing the cost of production is treated as capital expenditure. Similarly, all establishment and other expenses such as those incurred by way of repairs, replacements, renewals of existing assets which do not in any way add to their earning capacity but simply serve to maintain the original equipment in an efficient working order and generally all such expenses which are incurred in the conduct and administration of the business are properly chargeable to revenue expenditure.

It is, however, necessary to examine some of the leading cases on the subject, both Indian and English based on the analogous provisions of the respective Income Tax Acts, to ascertain the tests to be applied for determining the nature of the expenditure. The tests which can be formulated from these cases, in our view, can neither be infallible, nor is their application to the facts of any particular case easy for discriminating between expenditure which is and expenditure which is not incurred solely for the purpose of earning income, profits or gains.

In *John Smith and Sons* v. *Moore*, 1921 (2) Appeal Cases 13, the appellant's father, who carried on business as a shipping and coal agent for many years prior to his death, gave an option to his son under his will to take over on his death the assets of his business at a valuation but without paying anything for goodwill. The assets included certain forward coal contracts made by the father with several colliery owners for the delivery of coal by the latter in periodic instalments at prices which ultimately turned out to be very advantageous to the purchaser. These coal contracts were valued at £ 30,000. The appellant claimed, in arriving at the amount of the profits of the business chargeable to Excess Profits Duty under the Finance (No. 2) Act, 1915, in an accounting period from March 7, 1915 to December 31, 1915, to deduct this £ 30,000 as representing part of the purchase price of the stock in trade. A majority of the House of Lords, consisting of Viscounts Haldane, Cave and Sumner, Viscout Finlay dissenting, held that the deduction was not permissible. Viscount Cave, at pp. 34 and 35, has dealt with this question in the following words:

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"If the profits which are to be considered are the profits derived from the trading operations of the continuing firm John Smith & Son, however constituted, then the expenses to be deducted are those, and those only, which were incurred in the course of those trading operations; and it is plain that the £ 30,000 deduction of which is claimed, does not fall within that description . . . . The £ 30,000 was not paid by the firm for coal, nor was it paid by the trading firm as such for coal contracts; it was paid by John Ross Smith out of his private pocket as part of an overhead transaction under which the business with its assets and future profits passed into his hands, and it left the trading profits of the firm unaltered."

He further aptly illustrated the test in this manner:

"If I buy the crop of an orchard in a particular year for £ 20 and sell it for £ 40 my profit is only £ 20. But the profit of the orchard is £ 40; and in comparing the produce of the orchard in that year with its produce in another year, it is the £ 40 and not the £ 20 that must be taken into account."

In the case of *British Insulated and Helsby Cables, Limited* v. *Atherton*, 1926 Appeal Cases 205, the assessee company claimed to deduct a sum of £ 31,784 which was settled upon a trust to form the nucleus of the pensions fund for its employees. The fund was constituted by a trust deed which provided that members should contribute a percentage of their salaries to the fund and that the company should contribute an amount equal to half the contributions of the members; and further that the company should contribute a sum of £ 31,784 to form the nucleus of the fund and to provide the amount necessary in order that past years of service of the then existing staff should rank for pension. This sum was arrived at by an actuarial calculation on the basis that the sum would ultimately be exhausted when the object for which it was paid was attained. On the winding up of the fund the whole amount was to be distributed among the members. The company, having paid the sum of £ 31,784 out of current profits, claimed that it was an admissible deduction in computing its profits for the purpose of assessment to income tax for the financial year 1917-18. The House of Lords rejected the claim on the ground that the amount so given was in the nature of a capital expenditure.

Viscount Cave, L.C. propounded a test which though not exhaustive is of considerable assitance in determining the nature

of the expenditure in most cases. He said at p. 213 and 214 of his speech as follows:

"But when an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, I think that there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue, but to capital.

It may be observed with reference to this passage that the expenditure is to be attributed to capital if it is made for bringing into existence an "asset or an advantage," though it is not necessary that it should have this result. It has also to be observed that an asset or advantage is for the enduring benefit of the trade. As Romer, L.J. citing Rowlat J. pointed out in *Anglo Persian Oil Co.* v. *Dale*, 1932(1) K.B. 124, that by "enduring" is meant enduring in the way that fixed capital endures and not in the sense that for a good number of years, it relieves the business of a revenue payment. What is permanent and enduring would depend upon the facts of each case. The test that was formulated by Lord Clyde in *Robert Addie Sons Collieries Ltd* v. *Inland Revenue*, 8 Tax Cases 671 and which was approved by the Privy Council in *Tata Hydro-electric Agencies Ltd.*, v. *C.I.T.*, 1937 I.T.R. 202 at 209, is in these words:

"What is 'money wholly and exclusively laid out for the purposes of the trade' is a question which must be determined upon the principles of ordinary commercial trading. It is necessary, accordingly, to attend to the true nature of the expenditure, and to ask oneself the question, 'Is it a part of the company's working expenses; is it expenditure laid out as part of the process of profiit earning? . . . . Or, on the other hand, is it capital outlay? Is it expenditure necessary for the acquisition of the property or of rights of a permanent character, the possession of which is a condition of carrying on its trade at all?"

In the case of *City of London Contract Corporation, Ltd.*, v. *Styles*, 2 Tax Cases 239, where the assessee took over a business of another company which had a number of unexecuted contracts on hand and the taking over company paid a lump sum of money to the out-going company to obtain the benefit of those contracts claimed it as a deduction, Lord Justice Bowen in the course of the argument said thus:

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"You do not use it (that is, the money which had bought the contractual rights) 'for the purpose of' your concern, (which means 'for the purpose of carrying on your concern') but you use it to acquire the concern."

This case was approved by the House of Lords in *John Smith & Sons* v. *Moore*.

The learned Advocate for the petitioner has laid great stress upon three cases in support of the proposition that the amount spent by the assessee in paying off a competitor should not be regarded as capital expenditure, but revenue expenditure. The cases upon which he relies are: (1)*R.S. Munshi Gulab Singh* v. *Commissioner of Income-Tax, Lahore*, (1946) 14 I.T.R, 66; (2) *Commissioner of Income-Tax, Calcutta* v. *Messrs. Piggot Chapman & Co.*, 1949 17 I.T.R. 317; and (3) *Commissioner of Income-Tax, West Bengal* v. *Lahoty Brothers Ltd.*, (1951) 19 I.T.R. 425. An examination of these and other cases would show that they deal with payments made for the purposes of increasing profits or minimising expenses or for buying off a competitor or for effecting a price control.

In cases like *Gavert Keen & Nettefolds* v. *Fowler*, 1910 (1) K.B. 713, *Munshi Gulab Singh & Sons* v. *Commissioner of Income-Tax*, Lahore, (1946) 14 I.T.R. 66, expenditure incurred for avoiding price competition and for increasing profits was held to be revenue. Similarly in cases like *G. Scammell & Nephew Ltd.*, v. *Rowles*, 1940 I.T.R. Suppl. 41, *Noble* v. *Mitchell*, 11 T.C. 372, *Anglo Persian Oil Co. Ltd.*, v. *Dale*, 16 T.C. 253, *Anglo-Persian Oil Co.* (*India*) *Ltd.*, v. *C.I.T.*, 1933 I.T.R. 129, payments made to avoid losses have been held to be revenue expenditure. In both these categories of cases the basis for the decision appears to be to facilitate the carrying on of the business in a more profitable manner than would have been the case if the expenditure had not been incurred. Such payments have been allowed as revenue expenditure as they were not incurred to secure an asset, but to enable the business to continue and make greater profits. There is yet another category of cases where expenditure is incurred to buy off a competitor altogether, such expenditure has been treated as of a capital nature. There may be other cases which fall into other categories, but we do not propose to examine all such cases which are not immediately germane to the point at issue before us.

We will now consider the cases cited by the learned advocate for the appellant which are urged in support of the expenditure being treated as revenue expenditure. In the case of

Commissioner of Income-Tax, Calcutta v. *Messrs. Piggot Chapman & Co.*, (1949) 17 I.T.R. 317; where a firm of exchange brokers purchased the goodwill of another similar firm together with the four seats in the Calcutta Exchange Brokers Association on payment of annuity in accordance with the terms specified with the selling firm which agreed not to work as an exchange broker or compete with the transferee firm, it was held by Das and Mukherjee, JJ. that the payment of the annuity was a revenue expenditure. Chakravarthi. J. in *Assam Bengal Cement Co. Ltd* v. *Commissioner of Income-Tax, West Bengal*, (1952) 21 I.T.R. 38 observed with reference to this case in the following words:

> "With great respect I confess the reasoning of the decision is not all clear to me, because after referring to a large number of Indian and English cases and particularly to *Collins* v. *Joseph Adamson and Co.* and *Associated Portland Cement Manufacturers Ltd.* v. *Kerr*, the learned Judges distinguish them and place their own decision on the sole ground that the payment of the annuity was contingent upon the receipt of brokerage from Ralli Brothers. What the last circumstance had to do with the payment, as made by the transferee firm, being of a capital or revenue nature is not easy to see. But, in any event, even if the decision be right I feel in no way embarassed by it in deciding the present case, where the payment is not to a person, previously engaged in the same line of business, in consideration of his withdrawing therefrom."

We are in respectful agreement with these observations and at any rate in our view that decision is an authority on the facts of that case. In the case of *Commissioner of Income-Tax, West Bengal* v. *Lahoty Brothers Ltd.*, 19 I.T.R. 425, one is not able to glean the full facts upon which the decision rests. Banerjee, J. observed at p. 429 that the payment was made to keep the competitor out of the areas where the assessee was carrying on its business. None of the leading cases upon the subject were considered by the learned Judges and the tests laid for distinguishing capital expenditure and revenue expenditure do not appear to have been considered. The learned Judge observed at p. 429:

> "It is not possible to lay down any hard and fast rule for distinguishing a capital expenditure from revenue expenditure. There is no standard for making the distinction, except the standard set up by the prudence and experience of merchants. But so far as this case is concerned, we are

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not troubled with the distinction. In our view, the case is plain."

From these observations, with great respect, one is unable to gather the basis underlying the decision, although later on it appears from the observations that the amounts paid not being incurred towards acquiring an asset and for keeping a competitor out of the area, they were treated as revenue. It is, in our view, not safe to determine the nature of an expenditure for the purposes of fiscal laws on the prudence and experience of merchants. In this regard, it will not be out of place to cite the apt observations of Lord Greene, M.R. in the case of *Associated Portland Cement Manufacturers Ltd.* v. *Commissioner of Inland Revenue*, 27 T.C. 111 at p. 116, while dealing with the manner in which a trader might treat his asset in his account books or balance sheet and the manner in which for the purposes of the fiscal law it has to be treated. He said:

> "Whether or not an item of expenditure is to be regarded as of a revenue or capital nature must in many, and indeed in the majority of cases I should have thought, depend upon the nature of the asset or the right acquired by means of that expenditure. If it is an asset which properly appears as a capital asset in the balance sheet, then that is an end of the matter. But it must never be forgotten that, an asset which may properly and quite correctly appear and only appear in the balance sheet as an asset, may be acquired out of revenue. There is nothing in the world to force a company or the trader who buys a capital asset to debit the cost of it to capital. Conservatively managed companies every day pay for capital assets out of revenue, if they are fortunate enough to have the revenue available. It is, therefore, no sufficient test to say that an asset has been paid for out of revenue, because the consequence does not by any means necessarily follow that it is an asset of a revenue nature as distinct from a capital nature. Similarly, there is nothing to prevent a company or a trader who has acquired a capital asset from refraining from placing any value on that asset in his balance sheet."

The facts in the case of *R. S. Munshi Goolab Singh and Sons* v. *Commissioner of Income-Tax, Lahore*, are distinguishable from the facts of this case. There the business was not started or acquired by the Kartha of the assessee joint family and he had incurred no expenditure in acquiring the concern. The arrangement which the printing press owned by the assessee firm made

with the rival company of Messrs. Feroze Din and Sons and Messrs. Attar Chand Kapoor and Sons respectively was to secure full time work for the assessee's press and in the interests of its business the assessee arrived at an arrangement with his competitors and persuaded them to quote uniform prices in the tenders given to Government for printing and publishing work, in order to keep the press going by securing work so that it may show substantial turnover and thus earn profits after meeting the expenses of establishment and other costs incidental to the trade which were appreciably more than those of its competitors. On these facts, it was held by Mahajan, J. that the expenditure was in the nature of revenue expenditure. After examining the various cases and citing the observations of Viscount Cave, L.C. in the *British Insulated Cables and Halesby* v. *Atherton*, the learned Judge observed, at p. 88, that the expenditure was not made once and for all and with a view to bringing into existence an asset or advantage for the enduring benefit of the trade. The expenditure was of a recurring nature arising in the course of the trade, only incurred with a view to enhance the annual profits and with no other purpose or object in view.

It may be convenient at this juncture to examine the case of *Rao Saheb A. S. Alaganan Chetti* v. *Commissioner of Income-Tax*, Madras, 3 I.T.C. 44, where the assessee who was a carrying contractor paid Rs. 12,000 to a rival contractor to induce the latter not to compete with him which resulted in his obtaining the carrying contract at a rate higher than the previous year, enabling him to make larger profits. It was held by Coutts Trotter, C.J. Beasley and Madhavan Nair, JJ. that the payment of this sum of Rs. 12,000 was not a permissible allowance under s. 10 (2) (ix), (now corresponding to s. 10 (2) (xv) of the Indian Income-Tax Act).

This case is certainly an authority for the proposition that even though a sum of money has been expended to shut off a competitor which resulted in increased profits to the assessee, the amount so spent has been treated as a capital expenditure. This being the conclusion in the case, there would appear to be an apparent conflict with the conclusions arrived at by Mahajan, J. in R. S. Munshi Goolab Singh's case, although the tests applied in both the cases have been drawn from some of the same leading authorities. It appears to us that these two cases are distinguishable and that in fact no conflict does arise. In Munshi Goolab Singh's case, as has already been seen, the arrangement was for price control and for ensuring that profits are made. Mahajan, J. at p. 81, observed that the expenditure

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incurred is in the nature of an annual business expense incurred to run the press to its full capacity. The manner in which this object was sought to be achieved was for the assessee to enter into an arrangement with the competitors for procuring the printing contracts which were necessary to keep the printing machines working and meet the working expenses and if need be to make profits. This, in our view, is quite different from the case where an amount has to be spent in order to buy off a competitor as a *sine qua non* for obtaining a contract, which yields profit. The amount so expended is apart from the amount to be spent for working the contract once it is acquired. Supposing the management spends monies in procuring a device or a machine which reduces cost of production and thereby increases the profits, is the money so spent capital expenditure or revenue expenditure, even though the amount may be paid from the revenue account itself? The answer to this question, both on authority and principle, appears to be that it is a capital expenditure. If expenditure incurred in acquiring such an asset or advantage which has the object of increasing profits can be treated as capital expenditure, then the buying off of a competitor with a view to eliminating him from the field of business for acquiring a right, the exercise of which earns profits, is an advantage enduring to the trade, in the sense that it endures as long as the contract endures, and as such should be deemed to be a capital expenditure. In the instant case, there is no question of any established business between these assessees as in the case of Munshi Goolab Singh and Sons. The assessees stated in their petition before the Commissioner, Excess Profits Tax, that it is always common in abkari contracts that the prospective bidders meet at the last moment and form and constitute themselves into an amalgam for carrying on the business, provided they are successful in obtaining the contracts. In other words, individuals either tender for the contracts singly or along with other potential bidders as partners or buy off the most dangerous competitor with a view to securing such contracts whichever is advantageous. The very fact that the assessees tendered together for liquor and tried to set up a partnership between themselves and another person for toddy business would show that their *modus operandi* is to tender for toddy or liquor business in any particular district and in order to acquire it, buy off any potential competitor in the district where such tenders are given by agreeing to give a share in the profits to him. As we have already said, there is no proof that the assessees carried on an established business together so as to raise an inference that the buying off of a competitor could be deemed only for the purpose of increasing their

profits and bring it within the group of cases which treated such payments as a revenue expenditure. The buying off of a potential competitor in the circumstances set out above did confer an advantage on the assessees and was an expenditure which acquired an asset for the purposes of earning profits.

To apply the illustration analogous to that given by Lord Cave in *John Smith & Sons* v. *Moore*, to the facts of this case, it would appear that if each year I have to spend Rs. 500 in order to obtain a contract which brings me a profit of Rs. 1000 the profits are not Rs. 500 but Rs. 1000 and Rs. 500 spent in getting the contract is to be treated as the capital expenditure It would make no difference if that Rs. 500 is spent on the initial outlay, or in buying off a competitor, or for any other like purpose which has as its object the procuring of the contract. In the case of *Collings* v. *Joseph Adamsons & Co.*, 21 I.T.C. 400, a trade association of which the company was a member had bought the business assets of a member of the association with a view to prevent it from being acquired by an outside firm which was not a member of the association. The association, when it acquired the business in question, closed it down and got rid of the assets. The share in cash which the company obtained was the subject matter of the question at issue, the question being whether it was a profit which ought to be brought in for tax purpose. Lawrence, J. dealing with the case of *Southwell* v. *Sevill Brothers Ltd.*, 4 Tax Cases 430 referred to by the Solicitor-General in support of his contention, that in order that the expenditure should be of a capital nature, it is not necessary that there should be any tangible asset created by the expenditure, observed at p. 409:

> "From that case I think it may be deduced that you cannot test the question whether the payment is properly a capital or a revenue payment by seeing whether it can be shown to be productive. Nor do I think that the argument of Mr. King, that what was produced by the expenditure in the present cases was impalpable or intangible or incalculable, is a sound argument for holding that it must be treated as of a revenue nature. In fact, in both the present cases the payments which were made had, as a result the removal or the prevention of a trade competitor, who would not have been subject to the rules of the association. In my opinion, those payments created for the members of that association advantages of an enduring nature, and I think, of such an enduring nature as properly to be treated as capital, and not to be treated as revenue."

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Lord Greene, M.R. in the case of the *Associated Portland Cement Manufacturers Co. Ltd.* v. *Commissioner of Inland Revenue*, citing with approval the above dictum, observed that the buying off of a potential competitor improves the value of the goodwill and thus brings into existence an advantage. It would appear from all these cases that the approach to the question whether an expenditure is of a capital nature depends on whether an advantage or right of an enduring nature has been secured which is necessary for carrying on of the busines and not for earning profits.

Their Lordships of the Privy Council, in *Tata Hydro-electric Agencies Ltd.* v. *Commissioner, Income-Tax, Bombay*, (1936) 5 I.T.R. 202, dealing with a case where the appellant company had taken over the obligation to make certain payments to third parties as part of a transaction, whereby they acquired the agency business from Tata Sons Ltd., observed at p. 209:

> "They were certainly not made in the process of earning their profits; they were not payments to creditors for goods supplied or services rendered to the appellants in their business; they did not arise out of any transaction in the conduct of their business; that they had to make those payments no doubt affected the ultimate yield in money to them from their business but that is not the statutory criterion. They must have taken this liability into account when they agreed to take over the business. In short, the obligation to make these payments was undertaken by the appellants in consideration of their acquisition of the right and opportunity to earn profits, that is, of the right to conduct the business, and not for the purpose of producing profits in the conduct of the business."

Their Lordships made a distinction between this case where the assignees had to undertake a liability of the assignor as a part of the assignment to pay to third parties some amounts which were quite independent of any profits earned and the case of the *Pondichery Railway Co.* v. *The Commissioner of Income-Tax Madras*, 1931 P.C. 165 where profits had first to be earned and ascertained before any sharing took place. In the last mentioned case, the Pondichery Company had to pay half its net profits to the French Colonial Office which it tried to deduct as an expeniture under s. 10 of the Indian Income-Tax Act. Lord Macmillan put the whole matter tersely, at p. 170, in the following words:

> "A payment out of profits and conditional on profits being earned cannot accurately be described as a payment made to earn profits. It assumes that profits have first come into existence. But profits on their coming into existence attract tax at the point and revenue is not concerned with the subsequent application of the profits."

Mr. Rangachari for the Excess Profits Tax Commissioner argues that on this basis also, since the amount payable to Ramagoud is to be determined by a reference to profits which must first be earned, the expenditure cannot be allowed as deduction. We think this contention to be sound.

It appears to us that on an application of the aforesaid principles to the facts of this case, the agreement to give three annas share of the profits to Ramagoud in order to stop him from competing at the auction is not an expenditure laid out as part of the process of profit earning, but it was a necessary expenditure for the acquisition of the business from which profits were expected. In other words the amount agreed to be paid was not neceassary for the carrying out of the contract but was necessary to obtain the contract itself, i.e., for the acquisition of the initial asset or advantage which endured as long as the contract or the earning asset or advantage lasted. This is also clear from the fact as found by the income-tax authorities that the losses were not to be shared. Further, even on the application of the principle laid down in the Pondichery case once the profits come into existence which is a necessary condition for payment to Ramagoud, they attract tax. In this view of the matter our answer to the question is in the negative. The respondent will have his costs of the reference. This judgment will govern both the references.

Petitions dismissed.

APPELLATE CIVIL

Before Mr. Justice Rai Manohar Pershad

DANGAM VENKAT RAJAM .. . APPELLANT*

v.

PEDDI GUNDLA RAJIA .. .. .. RESPONDENT

Evidence Act, s. 116—Estoppel between landlord and tenant—Test—Existence of a valid tenancy.

Held, that s. 116 of the Evidence Act does not deal with all kinds of estoppel or occasions of estoppel which may arise between the landlord and the tenant. In order to raise an estoppel, the question to be decided is not whether the tenant was let into possession by the landlord but whether a valid tenancy has arisen. The tenant may show that no valid tenancy has been created between the landlord and himself because the lease was executed under a mistake or in consequence of a fraud, misrepresentation or coercion practised on him by the landlord. But in the absence of any such circumstance as would avoid a contract, the execution of a lease or a verbal agreement to hold as a tenant, would constitute a valid tenancy and bring in estoppel.

The principle of estoppel exists whether the tenant was let into possession or whether he has continued to be in such possession by specific agreement between himself and the landlord. But there is this distinction, that in the former cases the estoppel is complete, i.e., the tenant cannot deny the landlord's title during the continuance of the tenancy, while in the latter case the estoppel is not complete in the sense that the tenant may evade it by showing circumstances which would vitiate the agreement between him and the landlord.

Krishna Rao Raghunath v. *Dhanna, A.I.R. 1935 Bom. 144*

Ramzani v. *Chowdhury, 151 Indian Cases 1029*

relied on.

Appeal against the judgment and decree of the District Judge, Karimnagar, dated 13th November 1950, in Appeal No. 83/4 of 1358 F. on the file of that court.

J. V. Narasing Rao, Advocate for Appellant.

.. .. for Respondent.

JUDGMENT

RAI MANOHAR PERSHAD, J.—Dangam Venkat Rajam, plaintiff-appellant, filed a suit for ejectment and recovery of the rent against Peddi Gundla Rajia with the allegation that the defendant took the 'Gudsi' (hut) on rent from the plaintiff after executing a rental deed. The period of lease has expired,

* Civil Appeal No. 613 of 1950. 27th January 1953.

but the defendant has neither returned the possession of the hut nor is he paying the rent. Defendant, in his written statement admitting the execution of the lease, stated that the defendant executed the lease relying on the statement of the plaintiff that he is the owner of the *gudsi*, but as a matter of fact the plaintiff is not the owner of the *gudsi*, so he is not entitled either to the possession or the rent. On these pleadings, certain issues were framed by the trial court. Parties led evidence. On a consideration of the evidence, the trial court decreed the plaintiff's suit. Defendant went in appeal which has been allowed. Hence this second appeal on behalf of the plaintiff. I heard the arguments of the learned advocate on behalf of the appellant. The other side is not represented here. In this appeal, it is argued that the appellate court has erred in dismissing the plaintiff's suit by holding that the question of estoppel does not arise in the case, as it has not been proved on behalf of the plaintiff that possession was given to the defendant in furtherance of the rental agreement, and mere execution of the rental deed would not entitle the plaintiff to a decree. Following up the contention, it is urged that estoppel exists in both cases: whether possession was given in furtherance of the agreement or the defendant was in possession before the rental agreement. Reliance is placed on the cases of *Dawood Khan* v. *Ahmed Sher Khan*, 36 Deccan Law Report 486, *Chandoo* v. *Prabhoo*, A.I.R. 1921 Nagpur 118, *Ramzani* v. *Bansidhar*, A.I.R. 1935 Oudh 385, and *Venkat Chetty* v. *Aiyanna Goundan*, 40 Madras 561.

In order to appreciate the argument of the learned advocate for the appellant, a reference to s. 116 of the Evidence Act is necessary, which runs thus:—

> "No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given."

Section 116 does not deal or profess to deal with all kinds of estoppel or occasions of estoppel which may arise between the landlord and the tenant. It provides that neither a tenant nor any one claiming through a tenant shall be heard to deny that

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that particular landlord had at that date a title to the property. Two conditions are essential to give rise to estoppel: firstly, possession of the property must have been given to the tenant and secondly, such possession must have been taken with the permission of the landlord. The fact whether in a case where possession has not been given in furtherance of the contract but the person had been in possession before, the question of estoppel would arise or not is one which has to be considered. The English rule emphasises the fact of a tenant being let into possession by the landlord as an essential foundation of a tenant's estoppel.

In the case of *Lal Mohammed* v. *Kalamus*, 11 Calcutta 519; *Faqir* v. *Bhaggu*, A.I.R. 1925 Allahabad 244; *Ramzan* v. *Bansidhar*, 108 Indian Cases 182 and *Rishkesh* v. *Melaram*, A.I.R. 1923 Lahore 483, it has been held by the said courts that a tenant is estopped to deny his landlord's title only if he was let into possession by the landlord and that there is no estoppel against the tenant if he was already in possession.

A contrary view has, however, been taken in the case of *Kumar Pershad* v. *Baraban Coal Concern Ltd.*, 64 Indian Appeals 311; *Sajju* v. *Basder Pershad*, A.I.R. 1937 Oudh 505 and *Krishna Rao Raghunath* v. *Dhanna*, A.I.R. 1935 Bombay 144, that if the relation of the landlord and the tenant is established, the tenant is estopped from denying the landlord's title even though he was not put into possession by the landlord. Same is the gist of the authorities cited by the appellant and I do not wish to discuss them in detail.

Thus, after a careful consideration I am of the opinion that the real question to be decided in such cases is not whether the tenant was let into possession by the landlord, but whether a valid tenancy has arisen. The tenant may show that no valid tenancy has been created between the landlord and himself because the lease was executed under a mistake or in consequence of a fraud, misrepresentation or coercion practised on him by the landlord. But, in the absence of any such circumstance as would avoid a contract, the execution of a lease or a verbal agreement to hold as a tenant would constitute a valid tenancy and bring in the estoppel. I am supported in this view by the case of *Krishna Rao Raghunath* v. *Dhanna*, A.I.R. 1935 Bombay 144 and *Ramzani* v. *Chowdhury*, 154 Indian Cases 1029. The principle of estoppel applicable will be the same whether a man was let into possession or whether he has continued into such possession by specific agreement between himself and the landlord.

In this case, a new tenancy may begin though the tenant has been in possession prior to that. The distinction between a case in which the tenant is let into possession by the person whose title he himself denies and that in which the person whose title he denies did not let him into possession, is that, in the former case the estoppel is complete, that is, a tenant cannot deny the landlord's title asserting that his tenancy continues, while in the latter the estoppel is not complete in the sense that tenant may evade it by showing circumstances which would vitiate the agreement between him and the landlord. The estoppel exists in both the cases.

Applying this test to the present suit, I find that the courts below have held the execution of the lease deed to be proved. When the execution of the lease deed is established, the fact whether possession was given in furtherance of the lease deed or that the defendant was in possession before the execution of the lease deed does not become so material as in both cases the doctrine of estoppel would become applicable.

In view of this, I cannot uphold the judgment of the appellate court. Appeal is, therefore, allowed, judgment of the first appellate court is set aside and that of the trial court restored. As the other side is not represented here, I do not wish to pass any order regarding costs.

Appeal allowed.

APPELLATE CIVIL

Before Mr. Justice Rai Manohar Pershad and
Mr. Justice Vithal Rao Deshpande

MUKKANDA .. .. .. PETITIONER*

v.

BIRDAG CHAND .. .. .. RESPONDENT

Civil Procedure Code, O. 46, r. 1—Reference—Essentials of a proper reference.

Held, that under O. 46, r. 1, Civil Procedure Code, a reference could only be made where no appeal lies and, before or on the hearing of a suit, the

* Reference Nos. 516, 517 to 575 of 1952. 12th January 1953.

Mukkanda v. Birdag Chand — Manohar Pershad, J & Vithal Rao, J. —

court trying the suit entertains a reasonable doubt and after drawing up a statement of the facts of the case and the point on which doubt is entertained, refers such statement with its opinion on the point for the decision of the High Court

Since, in the present case, there is neither any statement of facts nor is there any opinion of the court below about the case being non-appealable and it is not clear whether the trial court had any reasonable doubt the reference is not proper and valid and is therefore rejected.

Reference from the court of the Sessions Judge, Aurangabad.

ORDER

The District and Sessions Judge, Aurangabad, through a letter dated 3rd July, 1952 has forwarded a copy of the letter No. 378 of 18th June 1952 from the First Class Magistrate, Vijapur, and has requested the court to let him know as to how the cases mentioned in the list may be disposed of.

This letter was received on the administrative side of this Court, from where it was treated as a reference and transferred to the judicial side and which is before us now

From a perusal of the record before us it appears that the Munsiff, Vijapur, through a letter No. 378 of 18th June 1952 addressed to the District and Sessions Judge, Aurangabad, asked his guidance whether he was empowered to deal with the cases in view of the fact that the Bombay Agricultural Debt Relief and Settlement Act of 1939 is not in existence in the Hyderabad State. The District and Sessions Judge has forwarded this letter along with the records of 60 cases to this Court. On the admission side, this was treated as a reference.

The question that arises is whether this is a reference by the District and Sessions Judge, Aurangabad, or a reference by the Munsiff, Vijapur. If it is to be treated as a reference by the District and Sessions Judge, Aurangabad, then it cannot be a proper reference as the cases are not before him, and if it is to be treated as a reference by the Munsiff's Court, Vijapur, then in that case also, this reference is not valid, for, according to O.46, r. 1, C.P.C., a reference could only be made where no appeal lies and, before or on the hearing of a suit, the court trying the suit entertains reasonable doubt and after drawing up a statement of the facts of the case, and the point on which doubt is entertained, refers such statement with its opinion on the point for the decision of the High Court.

In the present case, there is neither any statement of facts nor is there any opinion of the court below about the case being non-appealable. Further, it is not clear whether the trial court had any reasonable doubt about it.

We are, therefore, of the opinion that as there is no statement of facts and the opinion of the court below, and the reference is also not by the Munsiff, Vijapur, the reference is not proper and valid. Thus, the reference is rejected. This order shall govern the other connected references. Order accordingly.

Ordered accordingly.

APPELLATE CRIMINAL

Before Mr. Justice Mohammed Ahmed Ansari and

Mr. Justice P. Jaganmohan Reddy

SRIRAM AND THREE OTHERS .. .. PETITIONERS*

v.

STATE OF HYDERABAD .. .. RESPONDENT

Criminal Procedure Code, ss. 435 and 439—Revisional powers of the High Court in pending cases—Nature and Scope—Charge for criminal conspiracy along with the charges for the principal offences—Legality—Complaint from the aggrieved party—Whether necessary in all cases—'Aggrieved party' explained.

The District Magistrate of the Hyderabad City District framed charges against the petitioners for the offences of cheating, falsification of accounts and criminal conspiracy to commit cheating and falsification of accounts. While the case was pending, the petitioners approached the High Court in revision for quashing the charges on the grounds that there is no *prima facie* case for framing the charges· that the charge for the offence of conspiracy cannot be joined with the charges for the main offences of cheating and falsification of accounts and that in the absence of a complaint by the Hyderabad Commercial Corporation which is the deceived person, no prosecution can be started on the complaint of a third party.

Held, that interference in revision by the High Court in pending criminal proceedings should be rare unless the impropriety is a flagrant one and immediate action is necessary to prevent injustice. One test of its being of such a nature is that one bare statement of the facts of the case without any elaborate argument should be sufficient to convince the High Court that it is a fit case for interference at the intermediate stage. Section 435 authorises the superior courts to call for and examine the proceedings of any inferior court before and after their termination for the purposes of satisfying itself as to the

*Criminal Revision Petitions Nos. 638 to 641 6th February 1953.

Sriram v. State of Hyderabad

correctness, legality or propriety of any finding, sentence or order or as to the regularity of any proceeding; in a pending case no question of the correctness or of propriety of a finding can arise and consequently the superior court only examines the proceedings of inferior court to satisfy itself as to their regularity. Where the facts alleged and sought to be proved do constitute an offence and the decision turns on the credibility of witnesses and inferences to be drawn after a close and critical examination of the documentary evidence, *interference by the High Court* with the proceedings of the inferior court, which under the law has the jurisdiction to decide in the first instance, would amount to an improper and illegitimate use of its revisional authority.

It is unusual for the High Court to interfere in revision in cases pending in the subordinate courts. An interference to quash proceedings should only take place in two contingencies, (1) if the prosecution allegations, even when accepted as true, do not establish any offence against the accused and (2) where an offence is established if the allegations are believed, but there is no evidence at all to support the allegations. The invocation of revisional powers during the pendency of a case in the trial court cannot be made a substitute for the exercise of the right of appeal, which an aggrieved party always has after the termination of the proceedings. The High Court is, therefore, reluctant to interfere in a case which has not yet been completed in the trial court and it would do so only in exceptional cases, such as, where a person is being harassed by an illegal prosecution or where there is some manifest and patent injustice apparent on the face of the proceedings calling for prompt redress or where the evidence on record for the prosecution clearly does not justify a charge of any offence or where the trial is on the face of it an abuse of the process of the court. Since none of the tests given above are fulfilled in the present case, there is no justification for the High Court to interfere in revision and quash the charges.

Choa Lal Das v. *Anant Pershad Misser, I.L.R. 25 Cal. 233*

Re. Harbhajan Singh Sodhi, A.I.R. 1942 Nag. 38

Jagmal Raja v. *The Crown, A.I.R. 1950 East Punjab 83*

Dains Ram v. *The State, A.I.R. 1951 Himachal Pradesh 56*

relied on.

2. As regards the contention that a separate charge for conspiracy cannot be framed when charges are framed for principal offences, it is based on the principle that it is not proper to include, on an indictment for conspiracy, defendants who have not been privy to the acts relied upon as proof of the alleged conspiracy and whose offences are wholly separate and distinct. But this judicial disapprobation would not apply to cases where all the defendants, as in the present case, are privy to the acts relied upon as proof of the alleged conspiracy. Besides, it is not illegal to join the charge of conspiracy to commit an offence with the charges for the main offences.

Re. Surajpal Singh Indrapal Singh, A.I.R. 1938 Nag. 328

relied on.

Re Venkatramiah, A.I.R. 1938 Mad. 130

distinguished.

3. In order to constitute the offence of cheating, it is sufficient if the complainant was partly and materially, though not entirely, influenced by the

false pretences.

Reg v. *English, 12 Cox Criminal Cases 171*

relied on.

4. Where an offence is not covered by the provisions of the Criminal Procedure Code requiring complaint by the person aggrieved, courts of law would not be justified in departing from the general rule which authorises a person, having knowledge of the commission of an offence, to set the law in motion by a complaint even though he be not the injured party. The particular offence of cheating is not included in the sections requiring complaint by the party aggrieved and it would amount to an enlarging of the scope of the section by insisting on something which legally the prosecution is not bound to do. Moreover, the person aggrieved does not mean one directly injured nor one who would be entitled to compound the offence. There are cases where the phrase has been interpreted to include a person affected by the offence. In view of the fact that the Governmsnt is interested both in the directorate and policy of the Hyderabad Commercial Corporation, it cannot be said in the present case that the complaint by the police is by a party entirely disinterested in the party injured.

Re. Muthuvedi, A.I.R. 1952 Mad. 170

relied on.

5. In order to sustain a charge under s. 477-A of the Indian Penal Code, the offence must be committed by a person who is a clerk, officer, servant, employee or acting in such a capacity. Therefore, the petitioners cannot be charged for the main offence (s. 477-A) But with regard to the charge of the offence of conspiracy, it is sustainable since it is a distinct and separate offence. All that is necessary is the establishment of the agreement for the doing of the act which is so punishable. Its being punishable, because it is done by a person in a particular capacity, does not affect the liability of the conspirators.

Revision against the order of the District Magistrate, Hyderabad City District, dated 21-7-1952 in Criminal Case No. 109/2 of 1952 on the file of that court.

C. Rangachar, Advocate for Petitioners.

N. S. Raghavan, Advocate for Respondent.

ORDER

MOHAMMED AHMED ANSARI, J.— These four revision petitions are against the charges for the offences of cheating (s. 353), falsification of accounts (s. 405) and criminal conspiracy to commit cheating and falsification of accounts (s. 77-B), which have been framed against the petitioners by the District Magistrate of the Hyderabad City District. The revision petitioners are Sriram, Gajanand, Beharilal and Gisulal, who are accused Nos. 1 to 4 in a criminal case No. 159-2 of 1951, which is pending in the court of the aforesaid Magistrate. The challan filed by the police was against six persons and one of them

Sirola v. State of Hyderabad

M. A. Ansari, J.

Anant Rao. No. 5. has been discharged. The prosecution case is that:—

(a) the accused had entered into a criminal conspiracy to cheat and defraud the Hyderabad Co-operative Commercial Corporation, and dishonestly and fraudulently obtain from the head office of the Corporation at Hyderabad payments for the cotton seeds without having delivered them by showing through false receipts the seeds as having been delivered to the local unit of the Corporation at Manvat:

(b) in pursuance of the said conspiracy, accused Nos. 1 to 4 obtained from accused No. 6, Hamiduddin, the then Taluqa Corporation Officer at Manvat, four false receipts (Exs. p. 25 to 28) showing 5625 pallas of cotton seeds as having been deposited by accused No. 4 through the firm of Sriram Bhagwandas, which firm belongs to accused Nos. 1 to 3; on the strength of these receipts accused Nos. 1 to 4 submitted three bills (Exs. p. 22 to 24) for payment to the office of the Chief Accounts Officer of the Corporation in Hyderabad City, and obtained three crossed cheques (Exs. p. 46 to 48) on the Hyderabad State Bank, totalling in all for Rs. 1,13,625 and drawn in favour of accused No. 4; on these chequs accused No. 2 forged the endorsements as having been made in favour of accused No. 1, who negotiated them by signing on them for realisation through his account in the Hyderabad State Bank;

(c) the Government had earlier ordered export permits to be given to persons for double the quantity of the cotton seeds which they had deposited in the Corporation's godowns; but such export permits were later cancelled and compensations sanctioned for the loss caused by the cancellation; on January 20, 1948, accused Nos. 1 to 3 submitted a bill (Ex. p. 50) for the compensation of the loss caused by the cancellation of the export licence to accused No. 4, which had been issued on the strength of the false deposits of cotton seeds in the Manvat godowns and again received a crossed cheque for Rs. 67, 500 (Ex. p. 49) on the Hyderabad State Bank as compensation; this cheque was also in favour of Gisulal and was realised by accused No. 1 in the manner followed for getting the amounts of the earlier cheques; and

(d) after the price and compensation amount had been recovered and the whole scheme of the fraud had been carried out accused Nos. 1 to 4 purchased in the falling market cotton seeds and deposited them in the Manvat godowns during February, March and April, 1948; the fall in the price of the

commodity at the time was due partly to the cancellation of the export licences and partly to the coming into the market of fresh cotton seeds from the new crops.

2. The trying Magistrate had discharged Anant Rao, accused No. 5, on the ground that he was not shown to have made any profits out of the deal, was a mere servant of accused No. 1, and his act of presenting the bills can be explained as being performed in the discharge of his service. He has also refused to frame a charge of forgery for purpose of cheating, because he is of the view that the endorsements by accused No. 2 on the cheques were without dishonest intent and impliedly authorised. He has, however, framed the charges for the offences under s. 353, 405 and 77-B as mentioned earlier in this judgment, and then these revision petitions have been filed against the aforesaid order.

3. The arguments urged for quashing the charges can be summarised into four groups:

(i) The charge for the offence of conspiracy cannot be joined with those of the main offences of cheating and the falsification of the accounts against the petitioners.

(ii) The cheques for the cotton seeds were given on the guarantee of the Merchants' Association, and no offence of deceit has been committed, as the guarantee was the inducement to part with money and not the false receipts.

(iii) There is no complaint by the Corporation, who is the person deceived, and hence no prosecution can be started on the complaint of a third party.

(iv) The Judge in holding that no cotton seeds were deposited on the relevant dates has misread the evidence; there is no *prima facie* case for the framing of the charges and, therefore, they should be quashed.

4. In order to appreciate fully these arguments, I propose to give certain facts in the case, to analyse briefly the prosecution evidence relating to the alleged non-deposit of the cotton seeds, and then to decide whether there are sufficient legal grounds for reversing at this stage of the case the *prima facie* conclusion of the Magistrate. The first three legal issues raised in the case can then be disposed of, for they proceed on the assumption that the facts deposed to by the prosecution witnesses about the non-deposit of the cotton seeds are *prima facie* correct and they would not arise if the case failed through absence of any evidence.

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5. It appears from the evidence that the Hyderabad Co-operative Commercial Corporation was registered in Aban 1355 F. (September 1946) under the Co-operative Act, with head office in the Hyderabad City. It had different sections dealing with purchases, godowns, transports, disposals, accounts and establishments. The Managing Director was the head of the departments, each section being controlled by a Chief Officer, who worked under the Managing Director and the Director worked under the Chairman, who was usually a Minister. The Corporation had a Board of 21 Directors, and out of these eleven were nominated by the Government, the remaining being elected by the co-operative unions who were its shareholders. The Corporation had one office in each district which was located at the headquarters of the district and was in charge of an officer. There was another officer for the accounts branch in every district who was called the Disbursing Officer. Then, there were Taluqa Corporation Officers in charge of each of taluqa units, who worked under the District Corporation Officer looking after the purchases, transports, godowns and supplies of the grain. The Corporation dealt with food grains, partly by procurements in the open market and partly by procurements under the levy system. There is evidence to show that at each Taluqa office three registers were maintained. Registers *seen* and *swad* related to the deposits and issues of the commodities and on their basis a third register called *toi* was maintained showing receipts, issues and the balance of the commodities. The Government in its Finance and Supply Departments decided the policy of the Corporation.

6. The system followed for the payments of the purchases made in the districts is given by Damodar Naidu, P. W. 8. According to this witness, the bills for such payments had to be submitted to the Disbursing Officer of the district concerned, and he had to scrutinise whether the bills were supported by triplicate challans, the supplier had signed them, the store-keeper or the Taluqa Corporation Officer had certified that the commodities were received in the godowns, the references to the folios of the registers wherein the supplies had been accounted had been quoted, the District Corporation Officer had signed on the reverse of the bills and the rate and all the calculations were correct. When the Disbursing Officer passed the bills for payments they were paid in cash by the district treasury. It would have been difficult for any person under such a system to commit successfully any fraud at the Head Office, but certain changes were effected in the system by official orders at the time when the alleged false bills for the cotton seeds were

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presented. The facts relating to the above changes as well as those about the facility for the export of cotton seeds should now be given, as both of them afforded opportunities to persons, who may not be over scrupulous in their methods of earning wealth.

7. Mr. Raziuddin, the then Supply Secretary, addressed a letter (Ex. P. 70) to the Collectors of Parbhani, Aurangabad, Nanded and Osmanabad on Amardad 18, 1356 F. (June 18, 1947) stating that several traders had informed him about large stocks of cotton seeds lying in the districts and he would be grateful if information and opinion were given as to whether the addressees had any surplus cotton seeds as well as the rough estimate of the quantity which could be exported outside the dominion. The Collector of Parbhani District, in which the Manvat Taluqa is situated, replied by letter (Ex. P. 71) on Amardad 23, 1356 F. (June 23, 1947) that the Market Superintendent and the Tahsildar had been asked for the information about the stock of cotton seeds and on receiving the information he would be able to give his opinion; but his district was suffering from shortage of fodder and the only substitute would be the cotton seeds. He also mentioned that the information gathered showed that there was shortage of cotton seeds, the reason being that in the beginning of the season the traders had exported huge quantities of cotton seeds on the last year's permit and he suggested the inadvisability of the export of cotton seeds even outside the district. Notwithstanding this letter, a Notification (Ex. P. 73) was issued by the Supply Secretariat on October 9, 1947, that export permits would be issued to persons for double the quantity of the cotton seeds deposited in the Corporation's godowns. The last date for the deposit of the seeds was extended from time to time and finally fixed by the Notification (Ex. P. 78) to Bahman 7, 1357 F. (December 7, 1947). It may be mentioned here that the last instalment of 1462 pallas of cotton seeds by accused No. 4 was on the last date; his earlier deposits of 1125 pallas (Ex. P. 25) being on Dai 29, 1357 F. (November 29, 1947), of 1125 pallas (Ex. P. 26) on Dai 30, 1357 F. (November 30, 1947) and of 1912 pallas (Ex. P. 27) on Bahman 6, 1357 F. (December 6, 1947).

8. The policy of allowing exports of cotton seeds did not exist for long; for according to P.W. 27, at a meeting of the Food Sub-Committee, the Supply Secretary put up the statistics of the stock of cotton seeds and suggested exports, the Revenue Member did not agree and said that according to his information there was scarcity in the dominion, hence no export should be

allowed, the President was in agreement with the view of the Revenue Member and it was ultimately decided that no export should be allowed; then Mr. Raziuddin urged that the merchants who had purchased the stock would suffer and the Committee decided that they might be paid compensation in consultation with the Finance Department. Ex. P 61 is the minutes of the meeting in which compensation for cancelling of the permits was decided upon and Ex. P. 55-D shows that Rs. 12 per palla were decided as the damages for such cancellations.

9. About the same time there was a relaxation in the rules of the Corporation relating to the payments for the commodities deposited in the districts. On Dai 3, 1357 F. (November 3, 1947) the Financial Secretary wrote (Ex. P. 55–A) that the traders who had deposited moong and cotton seeds in the Corporation godowns in the districts had seen him and complained about delays in payments, and in view of the difficulties they desired payments to be made in the city, which should be arranged on the basis of challans signed by local units or storekeepers, provisionally on the responsibility of the traders, subject to the verifications of the challans by the District Corporation Officer or the D.O. later. According to Ex. P. 55–B, the Chief Accounts Officer suggested the modification that it would safeguard the interests of the Corporation if the payments were made after obtaining the guarantee from the Merchants' Association instead of making payments on the responsibility of the individual trader, and this new procedure was followed in making the payments to the accused in Hyderabad.

10. The manner of getting the payments for the cotton seeds and the compensation for cancellation of the export licence is fully established in the case. Three bills for cotton seeds (Exs. P. 22, 23 and 24) were presented to the head office of the Corporation for payments and they were accompanied by four receipts (Exs. P. 25, 26, 27 and 28), showing the deposits of the seeds in the godowns at Manvat, and were testified by accused No. 6. The bills were passed as deposed to by P.W. 8 and crossed cheques in favour of Gisulal (Exs. E. P. 46, 47 and 48) were issued by Sulabhavi, P.W. 19. The cheques bear endorsements by Gisulal in favour of Sriram Bhagwandas and were credited in Sriram's accounts in the Hyderabad State Bank. This is established by the evidence of P. Ws. 13 and 24. Then another bill (Ex. P. 50) for the compensation due to the cancellation of the export permit was presented on January 20, 1948, and a crossed cheque (Ex. P. 49) for Rs. 67,500 in favour of Gisulal was issued on the State Bank. It was also endorsed

in favour of Sriram Bhagwandas and similarly credited in the account of Sriram. This is established by the evidence of P.Ws. 7, 8, 13 and 24.

11. The question, therefore, to be decided in these revision petitions is whether there is evidence in support of the prosecution case that, on the relevant dates, no cotton seeds were in fact deposited in Manvat godowns and whether the arguments advanced for rejecting the evidence should at this stage of the case be adjudicated upon. The prosecution has produced three sets of facts in support of this part of the case:—

(a) On November 29 and 30, 1947, as well as on December 6 and 7 of the same year, 5625 pallas of cotton seeds were not deposited by the accused Gisulal in the godowns of Manvat.

(b) To cover the incorrect entries in the registers relating to the deposits, the accused in collusion with Nagaling and Vaidyanath arranged to show 5200 pallas of cotton seeds as issued from the godowns at Manvat to (1) Prakash & Co., (2) N.S. Kartanker, (3) Vaidyanath Viswanath and (4) Narayan Naroba, who were mere dummies and deposited Rs. 1,20,900 in respect of these cotton seeds. Unexpectedly, the issue of cotton seeds to these merchants were cancelled and they were asked to redeposit the cotton seeds; thereupon fictitious entries were made about their redeposits.

(c) Then in the falling markets from February to April, the required amounts of cotton seeds were deposited.

12. The first set of evidence consists of the depositions of Renukadas, P.W. 2, Dattatri Ram Rao, P.W. 3, Dattatri Rao Janardhan, P.W. 4, Narhari, P.W. 6, and Ex. P. 18, a book maintained by P.W. 3, wherein he entered the commodities weighed by him as they were deposited in the godowns and which does not mention the full quantum of the cotton seeds deposited by the accused. P.W. 3 deposes that he was entrusted with the work of weighing the commodities which were received in the godown, he used to weigh cotton seeds, he used to keep a note of the commodity weighed, the entries were made in Ex. P. 18, the total number of bags of cotton seeds weighed by him is only 1150, all the bags weighed were stored in godown No. 9, which belonged to Ram Raja Ram Patri, and as his daughter was ill Janardhan was asked to weigh the cotton seeds, he made entries in the book only for Dai 18, 1357 F. (November 18, 1947.) In his cross-examination, he admits that he used to write *kacha tipan*, and on the basis of the entries in the *kacha tipan*, Zakar Ali used to make the entries in the *seen* register,

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Zakar Ali used to maintain *seen*, *swad*, and *toi* registers. He further says in the cross-examination that he was not given *kacha tipan* for cotton seeds. P.W. 4 says that he weighed cotton seeds once or twice, the quantity that he weighed was only 180 bags. P.W. 2 deposes that cotton seeds were deposited in the two godowns of Ram Raja Ram Parti, and Zora Veermal, there were about 1000 bags in the former and 2000 in the latter. Dattatri Ram Rao, P.W. 3, had a note book in which he entered the weights, he can indentify the book and identifies the Ex. P. 18. P.W. 6 deposes that Gisulal brought cotton seeds to Manvat in Khurdad and they were deposited in the *dharamsala* godown. In the cross-examination, he says that *toi* registers were written on the basis of *swad* register. The *toi* register was written sometime after 15 days or a month. *Seen* and *swad* registers were the basis for the entries of *toi* register, and these were daily written. It was argued before us that Ex. P. 18 is obviously an incomplete record of the commodities deposited and in absence of the *seen* register which has not been produced, this set of evidence is inconclusive to establish the fact of no cotton seeds having been deposited on the relevant dates and the trying Magistrate has erred in relying on the evidence of these witnesses as well as on Ex. p. 18. But this set of evidence is closely linked with the next, which has been adduced to show that fictitious issues of cotton seeds were arranged to eliminate the chances of detection of false entries by the absence of cotton seeds in the godowns. I shall now deal with the second set.

13. On December 15, 16 and 17, 1947, four applications (Exs. P. 39 to 42) were presented to the Tahsildar of Patri for the issue of cotton seeds. Vaidyanath Viswanath's applications are Exs. 39 and 40, and in the former he asks for 700 and in the latter for 1000 pallas of cotton seeds to be issued to him. Prakash & Co.'s application, (Ex. P. 41) is to the same authority and prays for 1,200 pallas of cotton seeds to be issued. N. S. Kartanker's application (Ex. p. 42) asks for 1000 pallas of the commodity. Permissions for taking these pallas of cotton seeds from Manvat godowns were given and Rs. 1,20,900 were also deposited in the Tahsil. Nagaling, P.W. 5, says that he is the proprietor of the three firms, and Gisulal told him that there was a profit, the witness pleaded his financial inability, at which Gisulal informed him that he would get the money from Beharilal, who would get eight annas as profit, and the witness and Gisulal would each share four annas, after the agreement Gisulal brought Rs. 90,000, the witness and Gisulal went to Patri, the three applications were given and money deposited,

after permissions were brought to Manvat, Hamiduddin said that he would deliver the goods to Gisulal, the witness does not know whether the seeds were delivered, after 10 or 15 days the witness received notices for the redeposit, he took Gisulal to Taluqa Corporation Officer and the Taluqa Corporation Officer said that the stocks were redeposited. This witness says that he also gave authorities to Gisulal to collect the amount twice, and Exs. P. 43 and P. 45 are the two authorities signed by him, the refund statements were returned as they were not signed by the merchants, and the witness handed over the refund statements to Baba, after putting his signatures on them. He says that Beharilal told him that he would be paid after the money was received.

14. Vaidyanth, the proprietor of the firm called Narayan Naroba, also applied (Ex. D. 10) for 1300 pallas of cotton seeds, and was also given permission to draw the quantity from Manvat godowns. He died on July 7, 1949, and Ex. P. 63 is his death certificate which has been proved by P.W. 15. Before his death, a statement of his (Ex. P. 57) was recorded by P.W. 18, in which he says that he had no connection with the application for the seeds, and gave a blank paper to Gisulal. P.W. 10, the brother of the deceased, and P.W. 12, his gumastha, depose that the deceased was not in a position to purchase 1300 pallas of cotton seeds. It was urged before us that the statement of the deceased person was inadmissible in evidence. No useful purpose will be served in passing judgment on this objection; for the close connection between these firms and the accused is proved by Ex.D. 21 in which they are mentioned as accused's firms, and the money deposited by them has been finally adjusted in Sriram's account.

15. It was further argued on behalf of the revision petitioners that Nagaling is an accomplice, the transactions were genuine, there are no corroborations of the accomplice's evidence, and the prosecution has failed to prove the case, especially when the cotton seeds which were alleged not to have been deposited by the accused were later verified to have been received in the godowns on the relevant dates by Ex. D. 17, and in his replies to questionnaire given to him by the police (Ex. D. 15), P.W. 19 has said that the bills were passed provisionally pending confirmation of the Disbursing Officer and the D.O. has confirmed in his letter No. 2072 dated Farwardi 29, 1357 F. (February 27, 1948) that they were received in the Manvat godowns. This argument overlooks the prosecution evidence of the entries in the fortnightly returns of the Manvat godowns

showing absence of 5200 pallas of cotton seeds alleged to have been redeposited by the four firms after the cancellation of their permits. It was argued on behalf of the prosecution that these cotton seeds were shown to have been returned to the godowns at the end of January 1948 (Exs. P. 30 to 32), and yet the godowns' registers do not disclose the stocks to include the re-deposits, for Ex. P. 20 series which are the returns for the month of January do not show so much cotton seeds. If the redelivery of the cotton seeds by the four firms, which are closely associated with the accused, be shown to be false, it certainly adds weight to the case of the deposits of 5625 pallas and issue of 5200 pallas of cotton seeds being mere book entries. With such deposits and issues, there would not be materials in the godowns to falsify the book entries; but once shortage is shown in connection with the dealings closely linked with the accused's deposits, it would certainly support the *prima facie* conclusion of the trying Magistrate that there were no deposits of the cotton seeds.

16. As regards the deposits of the cotton seeds in the falling market, the evidence consists of the deposition of Sham Rao, P.W. 1, and a report (Ex. P. 5) prepared by him on Khurdad 14, 1357 Fasli (April 14, 1948) stating that in the three godowns of the Corporation there were only 2379 bags, and 9700 bags of cotton seeds in six other godowns belonging to merchants were not of the Corporation. It was argued before us that having regard to the telegram (Ex. D. 14) sent by the Corporation about renting the godowns, as well as the deposition of P.W. 5 that the Corporation used to stock its commodities in the merchants' godowns, P.W. 1 was wrong in excluding 9700 bags of cotton seeds from his report. The fact, however, remains that in the report (Ex. P. 5) the six godowns in which 9700 bags were mentioned to be deposited are shown to have been engaged in Farwardi 20 and 22, 1357 Fasli (February 20 and 22, 1948), whereas the deposits of the cotton seeds by the accused were before and on Bahman 7, 1357 F. (December 7, 1947). The subsequent renting of the godowns do furnish some evidence of the deposits of the cotton seeds being made at the time when they were taken on lease, which is after the alleged deposits by the accused and even after the redeposits by the four firms to whom permits to purchase cotton seeds were given.

17. It has been vehemently argued before us that the exercise of the power of revision by the High Court when the legislature has vested it with absolute discretion should be uncontrolled and the charges framed against the applicants

should be quashed. But there are authorities of several High Courts in this country that interference in pending criminal proceedings should be rare, and must not be, unless the impropriety is a flagrant one and immediate action is necessary to prevent injustice. In the case of *Choa Lal Das* v. *Anant Pershad Misser*, I.L.R. 25 Calcutta 233, a Division Bench has held that the High Court would not interfere in a case during its pendency unless it was of an exceptional nature, and one test of its being of such a nature was that one bare statement of the facts of the case without any elaborate argument should be sufficient to convince the High Court that it was a fit one for interference at the intermediate stage. The following observation appears at p. 235 :—

> " . . . . Without meaning to lay down any hard and fast rule, which it is impossible as it is undesirable to do upon a question like this. we think we may say that one safe practical test would be this, namely, that a bare statement of the facts of the case without any elaborate argument should be sufficient to convince this court that it is a fit one for its interference at an intermediate stage . . . . In the present instance, without prejudging it in any way, and without pronouncing any opinion upon its merits, we must say that the case does not fulfil this test."

Then, in *Nandlal* v. *Emperor*, A.I.R. (1932) Lahore 349, it was held that the fact that the case against the petitioners was an extremely weak one was no ground for quashing the charge framed against them in revision, if the case resulted in conviction, the appellate Court could rectify the matter. The Nagpur High Court also in *re Harbhajan Singh Sodhi*, A.I.R. (1942) Nagpur 38, has observed that s. 439 authorises the superior courts to call for and examine the proceedings of any inferior court before or after their termination for the purposes of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order, or as to the regularity of finding, sentence or order, or as to the regularity of any proceeding ; in a pending case no question of the correctness, or of propriety of a finding can arise, and consequently the superior court only examines the proceedings of inferior court to satisfy itself as to their regularity ; where the facts alleged and sought to be proved do constitute an offence and the decision turns on the credibility of witnesses and inferences to be drawn after a close and critical examination of the documentary evidence, *interference by the High Court* with the proceedings of the inferior court, which under the law has the jurisdiction to decide in the first

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instance, would amount to an improper and illegitimate use of its revisional authority. Falshaw J. in *Jagmal Raja* v. *The Crown*, A.I.R. (1950) East Punjab 83, has said that it is unusual for the High Court to interfere in revision in cases pending in subordinate courts, an interference to quash proceedings should only take place in two contingencies: (1) if the prosecution allegations, even when accepted as true, do not establish any offence against the accused, and (2) where an offence is established if the allegations are believed, but there is no evidence at all to support the allegations; once it is shown that facts are proved from which any inference at all as to the guilt of the accused can be drawn, the case ceases to be one in which it would be proper for the High Court to interfere in order to quash the proceedings. Lately, Chowdhry J.C. in the case of *Dains Ram* v. *The State*, A.I.R. (1951) Himachal Pradesh 56, has held that the invocation of revisional powers during the pendency of the proceedings in the trial court cannot be made a substitute for the exercise of the right of appeal, which an aggrieved party always has after due termination of the proceedings. The High Court is, therefore, reluctant to interfere in a case which has not yet been completed in the trial court and it would do so only in exceptional cases, such as, where a person is being harassed by an illegal prosecution or where there is some manifest and patent injustice apparent on the face of the proceedings calling for prompt redress, or where the evidence on record for the prosecution clearly does not justify a charge of any offence, or where the trial is on the face of it an abuse of the process of the court. He observes at p. 58:—

> "One test of the case being of the aforesaid exceptional nature is that a bare statement of the facts without any elaborate argument should be sufficient to convince the court that interference during the pendency of the proceedings in the trial court is justified."

18. The fact that the case against the petitioners is still pending in the lower court distinguishes most of the authorities cited by the learned counsel of accused No. 1 in which the discretionary powers of the High Court under ss. 435 and 439 have been exercised to interfere with the orders of lower courts. Where the case against the accused is concluded and he has no other remedy open, it is but just that the High Court should correct any injustice done to him. It is with this common background that the observations relied upon by the learned counsel of the accused were made in these cases. There are, however, a few cases like *re S. Kuppuswamy Aiyar*, I.L.R. 39

Madras 561, where charges have been quashed in exercise of revisional powers; but the trend of recent authorities, as has been shown, is not consistent with the view taken in the Madras case, and the exercise of the revisional powers in pending cases has been subjected to the voluntary restraints by the High Court. Without prejudicing the merits of the case at its final decision, I am of opinion that the tests given in the cases referred to by me are not fulfilled in these applications to justify my interfering at this stage and quashing the charges.

19. I shall now deal with the legal grounds urged for allowing the revision petitions, and the first is that where charges for the principal offences of cheating and falsification of the accounts are framed, a charge for the offence of conspiracy cannot be framed and tried with them. In support of this contention, reliance is placed on the case of *Goloke Behari Takal and others* v. *Emperor*, A.I.R. (1938) Calcutta 51, at p. 69, where it has been observed that where the proof of the conspiracy is sought to be rested on proof of participation in an overt act which itself amounts to an offence, the proper course is to put the accused on trial for that offence and it is not right in such a case to charge conspiracy on the off-chance of being able to secure a conviction for the overt act; that would in fact offend against the well-settled rule in many cases that when evidence at the disposal of the prosecution is insufficient to secure a conviction for the crime committed, it is inexpedient to prosecute the accused for a conspiracy, the proof whereof really rests on the establisment of the very crime. Reliance was also placed on *in re Venkatramiah*, A.I.R. (1938) Madras 130, in which case the opinion was expressed that, where an offence has been committed in pursuance of a conspiracy to commit the offence, the accused are to be tried for the substantive offence and not for the conspiracy. These authorities rest on the principle, which has been laid in *Reg* v. *Boulton*, 12 Cox Criminal Cases 87, that it is not proper to include on an indictment for conspiracy defendants who have not been privy to the acts relied upon as proof of the alleged conspiracy, and whose offences are wholly separate and distinct. This judicial disapprobation would not apply to cases where all the defendants, as in this are, are privy to the acts relied upon as proof of the alleged conspiracy. Moreover, there are other authorities that it is legal to try the accused on a charge of conspiracy to commit an offence even if the substantive offence has been carried out. This view has been taken by the Nagpur High Court in *re Surajpalsingh Indrapalsingh*, A.I.R. (1938) Nagpur 328, at p. 333, where several authorities of other High Courts including those of the Calcutta High Court

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and Madras High Court are quoted, and it is unnecessary to repeat them here. In view of the preponderance of the authorities that it is not illegal to join with the charge of conspiracy to commit an offence the charges for the main offences and also the absence in this case of the principle on which the authorities cited by the learned counsel of the accused No. 1 rest, I am of opinion that this legal contention of the advocate of accused No. 1 fails.

20. The next legal argument is that in view of the statement of P.W. 19 in Ex. D. 16 that the bills were provisionally passed pending the confirmation of the Disbursing Officer, who confirmed the challans in his letter No. 2072 dated 29-5-1357 F. (February 29, 1948) and also on the undertaking of the Hyderabad Grain and Seed Merchant's Association about being responsible for the payment of the bills, the parting of money cannot be the approximate consequence of the incorrect representation of the accused, and no charge for the offence of cheating can be framed. Reliance is placed in this connection on the case of *Harendranath Das* v. *Jotish Chandra Dutt*, A.I.R. (1925) Calcutta 100, where it has been held that the damage or harm caused or likely to be caused must be the necessary consequence of the act done by reason of the deceit practised, or must be necessarily likely to follow therefrom and the law does not take into account remote possibilities that may follow from the act. The case of *Ayodhya Parsad Sital Parsad* v. *Emperor*, A.I.R. (1938) Sind 193, was also relied upon to show that the act or omission should in itself cause damage or harm. I do not think these authorities lay down the proposition that the representation must be the sole cause of the damage or loss; for that would be contrary to what has been held to be the correct test in *Reg* v. *English*, 12 Cox Criminal Cases 171, that it would be sufficient if the complainant was partly and materially, though not entirely, influenced by the false pretences. Without prejudice to the final decision in the case, I think there is material on the record for the framing of a charge; whether on the facts held to be proved ultimately the charge is sustained is a different matter, and this is for the trying Magistrate to decide.

21. The third legal argument is that the Corporation being the person deceived the complaint against the accused should have been filed by it, and in the absence of such a complaint the case should fail. Reliance is placed in this connection on 63 Indian Cases 464. I think there is considerable force in the argument that where an offence is not covered by the provisions of the Criminal Procedure Code requiring complaint by the

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person aggrieved, courts of law would not be justified in departing from the general rule which authorises a person, having knowledge of the commission of an offence, to set the law in motion by a complaint even though he be not the injured party. The latest view in *re Muthuvedi*, A.I.R. (1952) Madras 170, is that enlarging of the provisions of the Code requiring complaints by the persons aggrieved may lead to disastrous consequences. Reddy, J. at p. 171 of the report says :—

> "An offence under s. 426 of I.P.C. is not one that is covered either by s. 198 or by s. 199, Criminal Procedure Code, and that being so it appears to me that in respect of an offence under that section the complaint of the person aggrieved is not essential. There does not seem to be any warrant for enlarging the scope of the above mentioned provisions of the Criminal Procedure Code . . . . Suppose the owner of a house has gone abroad, any person with intent to cause damage to the owner may set fire to the house with impunity, because the person aggrieved is not there to file a complaint. . . ."

21. The particular offence of cheating is not included in the sections requiring complaint by the party aggrieved and we would certainly be enlarging the scope of the section by insisting on something which legally the prosecution is not bound to do. Moreover, the person aggrieved does not mean one directly injured by, nor one who would be entitled to compound the offence. There are cases where the phrase has been interpreted to include a person affected by the offence. It has been shown earlier in the judgment that the Government was interested both in the Directorate and policy of the Hyderabad Commercial Corporation and it cannot be insisted that the complaint in the particular case by the police is by a party entirely disinterested in the affairs of the party injured. Therefore, this ground relied on by the learned advocate of the petitioners cannot be treated as ousting the jurisdiction of the court and fails for quashing the charge.

22. There is a passage in the judgment of the trying Magistrate at p. 23 of the typed copy wherein he says that Hamidud-din, accused No. 6, was in criminal conspiracy with the other accused, and in pursuance of common criminal intention he has made false entries in the challans and he caused similar entries to be made in various account books of the H.C.C.C., so he has committed the offence of falsification of accounts (s. 477-A/405) and the other accused are liable for this offence in the

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capacity of conspirators. This passage should not be taken as charging the petitioners, who are not servants of the Corporation with the main offence under s. 405 of the Hyderabad Code. The offence under the section must be by a clerk, officer, servant or employee in such a capacity, and it is a necessary ingredient of the offence that the persons who are charged must hold such an office. Therefore, the Magistrate has erred in using the expression which may amount to charging the petitioners for the main offence under s. 405. The position is different so far as the charge of the offence of conspiracy is concerned, as it is a distinct and separate offence which is punishable under s. 77–B. Under the section a person conspiring to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards is liable, even though the offence for which the conspiracy has been formed has not been perpetrated. All that is necessary is the establishment of the agreement for the doing of the act which is so punishable. Its being punishable, because it is done by a person in a particular capacity, does not affect the liability of the conspirators for agreeing to commit the act through such other person. They are not liable to punishment for the main offence; but for the conspiracy to prepetrate such an offence. Therefore, any charge for the main offence under s. 405 against the accused-petitioners would not be justified, as they are not the servants of the Corporation; but the charges for the conspiracy to commit the offence would be correct. The result is that in the beginning of Part–C of the charge-sheets the words "405 H.P.C. and 477-A, I.P.C." are deleted to obviate the danger of these parts of the charges which are against the petitioner being read as for the main offence under the s. 405. The references to the section in the rest of the charge-sheets require no modification as they indicate the charges to be for the conspiracy of the offence of falsification of accounts, just as the references to s. 353 in these parts indicate the charges to be of the conspiracy of the offence.

The result is that the revision petitions of all these four accused are allowed only to the extent of the charges against them for the main offence under s. 405 are concerned, which are illegal; but as regards the rest of the charges, the petitions are dismissed. The judgment will govern all the four petitions.

P. JAGANMOHAN REDDY, J.—I agree with the conclusions arrived at by my learned brother Ansari, but I would like to add a few sentences by way of caution. The learned advocate for the petitioners has argued at length commenting

upon the evidence and pointing out the discrepancies in the evidence adduced before the trial court, but it is not the function of the revisional court to assess the value or credibility of that evidence. All we are concerned is whether *prima facie* sufficient material exists for framing a charge, and once we are satisfied that a charge has been properly framed on the material on record and that there has been no irregularity or impropriety in the framing of the charge, we will not interfere with the order of the lower court. I may here observe that where the High Court, after considering the elaborate arguments both on facts and on law, has rejected a revision petition, sometimes there is a likelihood of the trial court assuming that the revisional court has expressed an opinion on the probatory value of the evidence adduced before the trial court and being influenced thereby in the final conclusions it may reach. It should, however, be borne in mind that the trial court is in fact unfettered in weighing the evidence and it is for that court to say whether any of the facts arising thereon can be held to be proved or not at the stage when it has to assess the guilt or otherwise of the accused.

Ordered accordingly.

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EXTRAORDINARY ORIGINAL JURISDICTION

Before Mr. Lakshmi Shankar Misra, Chief Justice and Mr. Justice Rai Manohar Pershad

DOST MOHAMMED KHAN .. .. .. PETITIONER*

v.

HYDERABAD GOVERNMENT AND OTHERS .. RESPONDENTS

Constitution of India, art 226—Application for writs of certiorari, mandamus and prohibition against the order of the Chief Minister, approving the opinion of the Atiyat Appeals Committee—Ex-parte opinion of the Atiyat Committee—Constitution of the Committee contravening cl. 6 of circular No. 10 of 1338 F.—Absence of sanction by H. E H. the Nizam—Validity of the Atiyat Enquiries Act of 1952.

H. E. H. the Nizam by means of a *Firman* dated 15th May 1947 referred to the Atiyat Appeals Committee for its opinion as to whether Shahzadi Begum, the sister of the petitioner was entitled to one third share in the income of *altamga* as well as in the *jamiat* jagirs. The opinion of the Committee was in favour of the sister and the same was approved by the Chief Minister. The petitioner, aggrieved by the order, challenged the validity of

*Writ Petition No 26/5 of 1953 19th March 1953.

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the order by means of a writ application on the grounds that the opinion of the Committee was ex-parte and in violation of natural justice, that the Committee did not consist of two members of the *Bab-e-Hukumat* (Executive Council), that sanction of H.E.H. the Nizam was not obtained for the final adjudication of rights; that the Atiyat Enquiries Act of 1952 was *ultra vires* the powers of the Rajpramukh as well as of the Legislature of the State.

Held, that the fact that the Atiyat Committee consisted of persons who were not members of *Bab-e-Hukumat* is not so material since the H.E.H. the Nizam himself has appointed this Committee. The circular No 10 of 1338 F. does not in any way take away the right of the H.E.H. to appoint other persons. The fact that the present appointment is made by H.E.H. as Rajpramukh and not as the Nizam does not make any difference.

Secondly, H.E.H. had only called for the opinion of the Atiyat Committee. The *Firman* did not ordain that the parties should be given an opportunity to represent their case. In the absence of such a direction, there is no force in the contention that the petititioner should have been given an opportunity to represent his case. Further, the Atiyat Enquiries Act of 1952 is not *ultra vires* of the powers of the State Legislature.

In order to issue the writ of *certiorari*, it must be shown that the tribunal or body or officer has acted wholly without jurisdiction or in excess of it or has acted in violation of the principles of natural justice or committed an error apparent on the face of the record and that such act or omission or error has resulted in manifest injustice.

The issue of a writ of *mandamus* is a matter for the absolute discretion of the court Some of the essential conditions relevant for the present purpose for the grant of such a writ are

(1) that the person applying must show that he is really and specially interested in the subject-matter and has a specific legal right to enforce;

(2) that there resides in him a legal right to the performance of the legal duty by the party against whom such a writ is sought; and

(3) that there is no other equally efficacious, convenient and beneficial remedy.

The writ of *prohibition* was a writ which used to be issued by the King's Bench Division primarily to prevent a court or tribunal, judicial or quasi-judicial, from exceeding its jurisdiction or acting contrary to rules of natural justice.

Since in the present case none of the conditions for issue of writs of *certiorari*, *mandamus* and *prohibition* exist, the petition is rejected.

Raja Bahadur Bisweshwarnath, Advocate for Petitioner.

N. Narasimha Iyengar, Advocate for Respondents.

JUDGMENT

RAI MANOHAR PERSHAD, J.—1. This is an application on behalf of Dost Mohammed Khan for the issue of writs of *certiorari*, *mandamus* and *prohibition* under art. 226 of the

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Constitution of India to quash the opinion of the Atiyat Appeals Committee of 9th May 1951 and the endorsement thereon of the Hon'ble the Chief Minister dated 31st May 1951 refusing to give an opportunity to the petitioner to represent his case and for an order against respondents Nos. 1 to 3 restraining them from enforcing the said order of the Chief Minister and prohibiting them and respondent No. 4 from taking any proceedings in pursuance of the said order.

2. The facts which give rise to this petition are that one Mohammed Anwar Khan, Jagirdar of Tamooru, situate in Bokardan Taluqa, Aurangabad District, had two types of jagirs: the first consisting of 23 *altamga* villages and the second consisting of 11 villages which were earmarked for *jamiath* (Armed forces). The *inam* enquiry of the mash was started during the lifetime of Anwar Khan who died in 1313 F. and the virasat (succession) proceedings of the deceased started along with the *inam* enquiry. Ibrahim Ali Khan was one of the claimants. But he died in 1321 F. leaving a son Dost Mohd. Khan, the present petitioner, and a daughter, Shahzadi Begum. The eleven *jamiat* villages were resumed to Khalsa through his late Highness's *firman* dated 12 Ramzan 1324 H. before the completion of succession and *inam* proceedings. In the succession proceedings the Nazim Atiyat recommended that *jamiat* jagirs having been already resumed by a *firman* of the H.E.H. the late Nizam, the *altamga* jagir alone could be continued in favour of Dost Mohammed Khan, and that Shahzadi Begum, respondent No. 4 be given a *guzara* (maintenance) of Rs. 100 per month. Aggrieved by this, the petitioner and respondent No. 4 preferred two separate appeals before the Atiyat Appeals Committee, Dost Mohmmed Khan praying that the 11 *jamiat* jagir villages be also restored and respondent No. 4 requesting that she should be given a share according to the Mohammedan Law in the mash instead of a mere *guzara*. The Atiyat Appeals Committee allowed both the appeals recommending a one-third share to Shahzadi Begum so far as her appeal is concerned and recommending restoration of the 11 jagir villages previously resumed so far as Dost Mohammed Khan's appeal was concerned. On submission of the recommendations of the Atiyat Appeals Committee by the Executive Council to H.E.H. the latter through his *firman* dated 17th Muharrum, corresponding to 24th May 1932 passed the following orders:—

"The opinion of the Atiyat Committee and the President is approved. Accordingly the *altamga* mash (including the villages specially meant for *jamiat*) after taking 5% on

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account of *Haq-e-mallikana*, be continued in favour of Dost Mohamed Khan. From the jagirs which the late Ibrahim Ali Khan may in his capacity as the heir of Anwar Khan be held entitled to Shahzadi Begum, the sister of Dost Mohd. Khan, shall be allowed a one-third share after deducting *Haq-e-intezami* and *Haq-e-mallikana*."

3. On 9th Khurdad 1342 F. Shahzadi Begum submitted an application stating that her brother did not pay her anything towards her share in the *jamiat* jagirs. The Joint Secretary heard the parties and gave his opinion that Shahzadi Begum was entitled to get her one-third share not only from the income of *altamga* but also from the *jamiat* jagir villages as per *firman* of H.E.H. Dost Mohammmed Khan submitted an application aggrieved by this opinion to the Revenue Member. Mr. Crofton, the then acting Revenue Member, while agreeing with the opinion of the Joint Secretary ordered that an *arzdasht* be submitted to H.E.H. requesting him to interpret the portion of the original *firman* pertaining to the jagir villages. He elucidated that Shahzadi Begum, as a daughter of Ibrahim Ali Khan, is entitled to receive one-third share. The Executive Council entirely agreed with the decision of the Hon'ble Revenue Member and ordered that an informatory *arzdasht* be submitted to H.E.H. H.E.H. did not pass any final orders but instead, through *firman* dated 23rd Jamadi 1336 H. corresponding to 15th May 1947, called for the opinion of the Atiyat Appeals Committee. Accordingly, the Atiyat Appeals Committee consisting of Raja Dhonderaj Bahadur and Sri Govind Rao gave their opinion on 9th May 1951 in favour of Shahzadi Begum. This opinion was later approved by the Chief Minister on 31st May 1951 which has given rise to the present petition.

4. Raja Bahadur Bishweshwarnath, advocate, appearing on behalf of the petitioner confined himself to three points only although various other points have been raised in the petition. The first point urged before us is that the judgment of the Atiyat Appeals Committee was passed ex-parte and the petitioner was not given any opportunity to represent his case. This act of the Tribunal, he contends, is in violation of natural justice and cannot be sustained. The second contention is that cl. (6) of *Gashti* (Circular) 10 of 1338 F. enjoins that the Atiyat Appeals Committee shall consist of two members of the *Bab-e-Hukumat* (Executive Council). The impugned opinion which has been sanctioned by the Revenue Member and the Chief Minister has been given by Raja Dhonderaj Bahadur and Shri Govind Rao who were not members of the *Bab-e-Hukumat* and for this

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reason also the impugned judgment has no validity in the eye of law. The third contention is that under Circular 10 of 1338 F. which was, and still, is, the law relating to *virasat* proceedings and crown grants, it is essential that the sanction of H. E. H. should be obtained for final adjudication of rights. The proceedings were not submitted to H.E.H. in this case for sanction and so the judgment is invalid and has no legal force. It is also urged that the Atiyat Enquiries Act of 1952 is *ultra vires* the powers of the Rajpramukh as well as the Legislature of the State under item 18 of the State List (No. 2) of the Constitution.

5. Shri Narasimha Iyengar, advocate, appearing on behalf of Shahzadi Begum in reply contended that H.E.H. only sent for the opinion of the Atiyat Appeals Committee and there was no question of giving any opportunity to any of the parties. With regard to the second point, he contends that prior to the Constitution also H.E.H. used to constitute the Atiyat Committee consisting of persons who were not members of the *Bab-e-Hukumat* and that it is not necessary that an amendment should be made in Circular No. 10 of 1338 F. Following up the contention he urged that after the Police Action, H.E.H. delegated his power to the Military Governor and the present bench consisting of Raja Dhonderaj Bahadur and Shri Govind Rao was constituted by H.E.H. on the recommendation of the Chief Minister and so it cannot be said that the bench was not properly constituted. With regard to the argument relating to the validity of the Atiyat Enquiries Act of 1952, he urges that this question does not arise in the present case as the *firman* calling for the opinion was passed long before the Constitution came into force. A similar argument is advanced on behalf of the other respondents as well.

6. After giving a careful consideration to the arguments advanced, we are of the opinion that there is no force in this petition and it should be rejected. So far as the first contention is concerned, the learned advocate appearing for the petitioner has conceded before us that during the days prior to the Constitution H.E.H. used to constitute the Atiyat Committee comprising of persons who were not members of the *Bab-e-Hukumat*. But he contends that it cannot be held to be legal unless an amendment is made in Circular No. 10 of 1338 F. We are afraid we cannot accept this contention either. H.E.H. had only asked for the opinion of the Atiyat Committee. The fact that the Attiyat Committee consisted of persons who were not members of the *Bab-e-Hukumat* does not become so material when it is remembered that H.E.H. himself has appointed this

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Committee. The contention that Circular No. 10 of 1338 F. makes a provision that only members of the *Bab-e-Hukumat* should be appointed does not in any way take away the right of the H.E.H. to appoint other persons. This right of the H.E.H. is not disputed at all. It is urged that the present appointment made by H.E.H. is as a Rajpramukh and not as the Nizam. This does not make any difference.

7. After this, we turn to the other argument that the petitioner was not given an opportunity to represent his case. In this contention too we find no force. H.E H. had only called for the opinion of the Atiyat Committee. The Firman does not ordain that the parties should be given an opportunity to represent their case. In the absence of any such direction, we are not inclined to accept the argument of the learned advocate that he should have been given an opportunity to represent his case.

8. The argument questioning the validity of the Atiyat Enquiries Act of 1952 cannot be sustained now in view of the decision of this court in the case of *Ahmed-un-nissa Begum* v. *State of Hyderabad*, I. L. R. 1952 (Hyd) 595. The petitioner has prayed for the writs of *certiorari*, *mandamus* and *prohibition*. The writ of *certiorari* could be granted if it is shown that a tribunal or body or officer has acted wholly without jurisdiction or in excess of it or has acted in violation of the principles of natural justice or committed an error apparent on the face of the record and such act, or omission, or error has resulted in manifest injustice. As indicated above, no such points have been made out in the present case and so there is no question of issuing any writ of *certiorari*.

9. As ragards the issue of *mandamus* and *prohibition*, we may point out that an order for the issue of a writ of *mandamus* is, as a general rule, a matter for the absolute discretion of the Court. Some of the essential conditions relevant for the present purpose for the grant of such a writ are:

(i) that the person applying must show that he is really and specially interested in the subject-matter and has a specific legal right to enforce;

(ii) that *there resides in him a legal right to the performance of the legal duty by the party against whom such a writ is sought;* and

(iii) that there is no other equally efficacious, convenient and beneficial remedy.

The writ of *prohibition* on the other hand, was a writ which used to be issued by the King's Bench Division, primarily to prevent a court or tribunal, judicial or quasi-judicial, from exceeding jurisdiction or acting contrary to rules of natural justice. In the present petition, the petitioner could not satisfy us as to what was the legal duty of the party against whom *mandamus* is sought. As discussed above, the petitioner has not made out a case either for the issue of a writ of *certiorari* or for the issue of *mandamus* and *prohibition*. The petition is, therefore, rejected. Having regard to the facts of this case, we do not wish to make any order regarding costs.

Petition dismissed.

APPELLATE CRIMINAL

Before Mr. Justice A. Srinivasachari

NAIMULLAH KHAN .. .. APPELLANT*

v.

THE STATE OF HYDERABAD .. .. RESPONDENT

Criminal Procedure Code, ss. 227, 236, 237 and 423—Accused charged and convicted for criminal breach of trust by the Magistrate—Conviction by the Sessions Judge for theft—Legality of conviction—Criminal Procedure Code, ss. 367 and 424—Judgment—Essentials of.

The appellant-accused was charged and convicted by the magistrate under s. 406, I.P.C. (Breach of Trust). On appeal the Sessions Judge on the same evidence found him guilty under s. 380 (Theft) instead of s. 406 and confirmed the sentence. It was contended by the appellant that the conviction could not stand as the accused was not given an opportunity to put forward his defence with regard to the new charge and that the judgment of the Sessions Judge did not conform to the requirements of law.

Held, that under s. 227 of the Criminal Procedure Code any court may alter or add to any charge at any time before the judgment is pronounced and in case of trials before the Sessions Court or the High Court, before the verdict of the jury is returned or the opinions of the assessors expressed. The only duty in such cases is to read out the charge and explain it to the accused. Section 236 enacts that where it is doubtful what offence has been committed by the accused and where a series of acts have been committed by the accused, the accused may be charged with having committed someone of the said offences. Further, under s. 237 where an accused is charged with one offence and it appears in evidence that he committed a different offence for which he might not have been charged, he may still be convicted of the offence which is proved by the evidence, although he was not actually charged with it.

* Criminal Appeal No. 115-6 of 1952-53. 15th January 1953.

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Similar powers are given to the appellate court under s. 423 of the Code If by the absence of a specific charge the accused is not prejudiced in any way, then the conviction would be held good, but in cases where it can be shown that the accused has been prevented from giving evidence material to his defence by reason of the amendment of the charge. the court should give him a new trial on the amended charge.

In the light of the above principles it is clear that the accused in the present case is not in any way prejudiced in his defence by altering the charge of breach of trust into one of theft on the same evidence.

Section 424, read with s. 367, of the Criminal Procedure Code enjoins that a judgment should contain in addition to the points for determination, a resume of the evidence and a discussion of the same with the reasons of the judge as to why he prefers the evidence of one side to that of the other.

Begu and others v. *The King-Emperor, 52 Indian Appeals 191.*

Thakur Shah v. *Emperor, A.I.R. 1943 P.C. 192.*

relied on.

Appeal from the judgment of the Sessions Court, Adilabad, dated 24-4-1952, in Case No 247/6 of 1951-52 on the file of that court.

Shabbar Hasan, Advocate for Appellant.

Mohd Mirza, Government Advocate for Respondent.

JUDGMENT

A. SRINIVASACHARI, J. — This second appeal in a criminal case was admitted after notice to the Government Advocate. It was alleged that the accused who is the appellant before me took away one khacher and gouna from the house of one Rama when he was away and when his mother alone was present in the house. It is stated that when the mother protested against his taking away these things, he assured her that he would return the things the next day. It is also stated that the same accused took away a pair of bullocks from the house of one Mahboob in his absence. Later on, the accused is said to have disposed of these bullocks, the cart and gouna to different persons making it appear as though he was the owner of all these things. The accused was charged under s. 406, I.P.C. and the magistrate on the evidence taken by him found him guilty and sentenced him to undergo one year's rigorous imprisonment. On appeal, the Sessions Judge of Adilabad came to the conclusion that on the evidence the offence that the accused could be held guilty of was one under s. 380 and not s. 406, I.P.C. Therefore, he held him guilty under s. 380 and confirmed the same sentence of one year's rigorous imprisonment. It is against this judgment of the Sessions Judge

that the appellant has come before the High Court in second appeal.

2. The learned advocate for the appellant confined himself to two contentions. The first contention is that the judgment of the Sessions Judge cannot be regarded as a proper judgment because there is no discussion about the evidence in the case; he (the Sessions Judge) has merely stated that in so far as the statements of the witnesses go, he agrees with the learned magistrate of the lower court. The second contention is that where the Sessions Judge chose to convict the accused of an offence different from which he was charged by the magistrate, an opportunity should have been given to the accused to put forward his defence with regard to the new charge under which he was going to be convicted. I would prefer to take up the second contention first. The relevant provision in the Criminal Procedure Code relating to altering or adding to any charge is s. 227, which says that any court may alter or add to any charge at any time before the judgment is pronounced and in cases of trials before the Sessions Court or the High Court, before the verdict of the jury is returned or the opinions of the assessors expressed. This would make it clear that there is power in the court to add to, alter or vary, an existing charge. The only duty in such cases is to read out the charge and explain it to the accused. Section 236 enacts that where it is doubtful what offence has been committed by the accused and where a series of acts have been committed by the accused, the accused may be charged with having committed all or any of such offences and he may even be charged in the alternative with having committed some one of the said offences. The illustration makes it clear that where an accused is charged with an offence which may amount to theft, or receiving stolen property or criminal breach of trust, or cheating, he may be charged with all the offences or any one of the offences. The illustration to s. 237 makes it further clear that where an accused is charged with one offence and it appears in evidence that he committed a different offence for which he might not have been charged, he may still be convicted of the offence which is proved by the evidence, although he was not actually charged with it. The illustration to this section makes it conclusive that even where a person has not been charged with an offence but the evidence shows that he has committed a particular offence, he can still be convicted under that offence.

Illustration:—'A' is charged with theft. It appears that he committed the offence of criminal breach of trust or

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of having received stolen property. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) if he was not charged with that offence.

The next question is whether the facts are such that notice to the accused of the offence for which he is going to be convicted should be given although he was not charged with it. And if there has been no prejudice to the accused by the absence of a specific charge, then a conviction would be held good. That such a procedure is allowed by law has been well established by the decision of the Privy Council in the case of *Begu and others* v. *The King-Emperor*, reported in 52 Indian Appeals 191, wherein their Lordships observed as follows:—"The illustration makes the meaning of these words quite plain. A man may be convicted of an offence, although there has been no charge in respect of it, if the evidence is such as to establish a charge that might not have been made . . . . They were not charged with that formerly but they were tried on evidence which brings the case under s. 237". It is only in cases where it can be shown that the accused has been prevented from giving or of his having failed to give evidence material to his defence by reason of the amendment of the charge, that the court should offer him a new trial on the amended charge, otherwise not. This view of mine is supported by the authoritative pronouncement of the Privy Council in the case of *Thakur Shah* v. *Emperor*, reported in 1943 Privy Council 192. The power to amend the charge is vested in the appellate court under the provisions of s. 423 of the Criminal Procedure Code. It is only where the court comes to a finding that by reason of the amendment in the charge if the accused has been misled and that consequently it has resulted in a failure of justice, that the court would order a retrial and not otherwise. It has to be observed in this case that the charge against the accused was one of criminal breach of trust and the appellate court convicted him for theft. I do not see how the accused has been prejudiced for having been charged for theft because, so far as the facts are concerned, the evidence was the same and it could not be said that the accused would have put forward a different defence if he were told that he was charged for theft. At the most, it could not only be said that, having regard to the facts, the offence could come under s. 406 and s. 380, I.P.C., but that cannot be regarded as having prejudiced the accused or having resulted in miscarriage of justice. I, therefore, hold that inasmuch as there has been no prejudice to the accused and there has been no resultant miscarriage of justice the case need not be sent back for retrial.

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3. Coming to the other argument of the learned advocate that there has been no discussion of the evidence, I do find that the Sessions Judge has merely disposed of the evidence in two lines. No doubt, the judgment ought to set out what the evidence is and not merely say that the court agrees with the opinion of the lower court. The Sessions Judge ought to have discussed the evidence stating as to why the evidence on record on the one side should be preferred to the evidence on the other. Section 424 of the Cr. P. C. makes it clear that what applies to a judgment of the original court shall apply to that of an appellate court other than the High Court. The judgment, therefore, in addition to containing the points for determination, should contain a resume of the evidence and the remarks of the judge with regard to the statement of every witness. It must be said that in this case the Sessions Judge has ignored this. But I find from the judgment that, in coming to a conclusion that the offence committed is one under s. 380 and not s. 406, he has gone through the evidence. Although the judgment is not in strict conformity with s. 424, read with s. 367, the case does not warrant a remand for a judgment anew. I would remark that the Sessions Judge ought to be more careful in pronouncing his judgment and not do it haphazardly by merely stating that he is in agreement with the trial court. It may happen that in some cases the accused is prejudiced by his not having the advantage of the opinion of the appellate court.

4. A note of warning may be sent to the Sessions Judge stating that he should hereafter be careful in going through the evidence and expressing his opinion with regard to the evidence in the case as required by law.

This appeal is dismissed.

Appeal dismissed.

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—

APPELLATE CRIMINAL

Before Mr. Justice Manohar Pershad and Mr. Justice Mir Siadat Ali Khan

KALAPOPLA SAIDULU .. APPELLANT*

v.

THE STATE OF HYDERABAD .. RESPONDENT

Penal Code, s. 364—Abduction in order to murder—Scope.

Held, that when the case of the prosecution is that the person abducted has been murdered by the abductor, there is no scope for a charge under s. 364 of the Penal Code.

Appeal from the judgment of the District and Sessions Court, Medak, dated 18th October 1950, in Case No. 40/8 of 1950 on the file of that court.

Gopalkrishnaiah, Counsel for Appellant.

Mohd. Mirza, Govt Advocate for Respondent.

JUDGMENT

This is an appeal in a criminal case. The District and Sessions Court, Medak, by judgment dated 18th October 1950, has convicted and sentenced the accused Kalapopla Saidulu, s/o Yalladu, to five years' rigorous imprisonment under s. 301 of the Hyderabad Penal Code, corresponding to s. 364 of the Indian Penal Code. We have heard the arguments of the learned counsel for the accused, Shri Gopalkrishnaiah and the learned senior government advocate, Shri Mohd. Mirza.

The facts alleged by the prosecution are that on 21st January 1949, in the village of Karvapalli, Miryalguda Taluqa, Nalgonda District, one Venkateswar Rao, a Congress worker was forcibly abducted by the accused and his comrades, five in number and that the said Venkateswar Rao was never heard of again. On these facts the prosecution charge-sheeted the accused under sections 125, 301 and 243 of the Hyderabad Penal Code, corresponding to ss. 149, 364 and 302 of the Indian Penal Code. Six witnesses were adduced by the prosecution. P.W. 1 is the Investigating Officer, P.W. 2 is the informant, P.W. 3 is the Patwari of the village, who has deposed that Venkateswar Rao was not heard of since he was forcibly abducted, P.Ws. 4, 5 and 6, Kotia, Kanakamma and Yellia, have been adduced as eye-witnesses to the fact of physical abduction. We

*Criminal Appeal No 1116 of 1951-52 11th December 1952

have carefully considered the whole record. The learned District and Sessions Judge has held that there is no evidence of the murder but that that the abduction of Venkateswar Rao has been proved and he has, therefore, convicted and sentenced the accused under Section 301 of the Hyderabad Penal Code.

The learned counsel for the accused has argued that this conviction and sentence is wrong in law. He has cited the marginally noted cases (A.I.R. 1947 Cal. 35, A.I.R. 1945 Cal. 42, A.I.R. 1940 Cal. 561), wherein it has been held that when the case of the prosecution is that the person abducted has been murdered by the abductor, there is no scope for the charge under s. 364 of the Indian Penal Code.

We respectfully agree with the above proposition of law and, in the result, the conviction and sentence of the accused is set aside under s. 301 of the Hyderabad Penal Code. But the facts of the case reveal that the accused took part in unlawful assembly. Hence we convict him under s. 122 of the Hyderabad Penal Code, corresponding to s. 145 of the Indian Penal Code; and as the accused has already served two years imprisonment he may be released forthwith unless required under some other offence.

Ordered accordingly.

APPELLATE CIVIL

Before Mr. Justice Shripat Rao Palnitkar and

Mr. Justice A. Srinivasachari

VISHNU AND OTHERS .. .. APPELLANTS*

v.

JAWAHERMALL AND OTHERS .. RESPONDENTS

Civil Procedure Code, O. II, r. 2 (1)—Scope.

The respondents filed a suit for recovery of possession and rent. The aggregate value of the claim was beyond the pecuniary jurisdiction of the Munsiff's Court, but at the stage of arguments they relinquished their claim for rent so as to bring the claim within the jurisdiction of the court and the suit was decreed. The appellants contended that such a relinquishment does not confer jurisdiction on the court which it did not possess at the time of the institution of the suit.

Held, that the relinquishment of claim contemplated under O. II, r. 2 (1) is before the institution of the suit and not at any subsequent stage. If on the date when the suit was instituted, the court did not have the requisite

*Civil Appeal No. 316/4 of 1350 F. 10th December 1952.

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pecuniary jurisdiction, it cannot acquire the same by reason of subsequent relinquishment of claim by the plaintiff.

Govinddas Swamy v. *Kaliaperumal, 1921 Mad. 696.*

Judi Chandriah v. *Vitala Seethanna, 1940 Mad. 689.*

relied on.

Second Appeal from the judgment and decree of the Court of the District and Sessions Judge, Aurangabad, dated 24-12-1349 F. in Appeal No. 244/4 of 1349 F. on the file of that court.

Gopal Rao Ekbote, Advocate for Appellants.

.. .. .. for Respondents.

JUDGMENT

Defendants are the appellants before us. The brief facts relating to this case are that the suit was filed by the plaintiffs for possession of the suit lands on the allegation that these properties were mortgaged with them by defendants 1 and 2 with possession; that subsequent to the mortgage, these lands were taken on lease by defendants 3 and 4. The plaintiffs prayed that a decree be passed in their favour for possession of the suit land and for Rs. 400 on account of the lease amount for a period of three years. The plaintiffs valued their suit for the purposes of jurisdiction at an aggregate value of Rs. 400, Rs. 300 representing the amount due from the lessees on account of the lease amount and Rs. 100 being the annual lease amount, the suit being treated as a suit to eject the lessees. The defendants raised the objection that the suit could not be treated as a suit against the lessees based upon the lease deeds executed by defendants 3 and 4, but must be treated as a suit for specific performance to get possession of the mortgage property which the plaintiffs were entitled to under the mortgage. The defendants, therefore, contended that the suit should be valued according to the mortgage amount, viz., Rs. 2,900. The trial court after hearing the arguments of the respective parties came to the conclusion that the suit should be treated as a suit for possession of land paying revenue and, therefore, valued the suit at ten times the revenue payable to the Government, that is to say, at Rs. 880, and called upon the plaintiffs to pay the deficit court fee. This order was passed on 7th Amardad 1347F. The plaintiffs carried out the orders of the court and paid the deficit court fee. When the case came on for arguments, the plaintiff's vakil made a statement that the plaintiffs were giving up their claim for the lease amount for three years, which they had claimed in their suit. The statement of the plaintiffs'

vakil was recorded in the proceedings and final arguments were heard. The suit was decreed by both the trial court and the lower appellate court. The defendants have now appealed against the above decrees.

2. The learned advocate for the appellants has confined his argument to the question of law arising in the case as to whether it was open to the plaintiffs to have relinquished a portion of their claim at the stage of the arguments. His next contention is that on the date when the suit was filed the claim of the plaintiffs was beyond the pecuniary jurisdiction of the Munsiff's Court. We have considered about the matter and we are of opinion that the contentions of the learned advocate are well founded. The jurisdiction of the Munsiff's Court at Kannad was Rs. 1,000 on the date of the institution of the suit and after the finding given by the court on the 7th Amardad 1347 F. the value of the suit for the purposes of jurisdiction became Rs. 1,180 (Rs. 880 plus Rs. 300), which was decidedly beyond the pecuniary jurisdiction of the Munsiff's Court, so that the short point is whether, where at the institution of the suit the court had no pecuniary jurisdiction over the subject-matter of the suit, it would get jurisdiction by reason of the plaintiffs relinquishing any portion of the claim so as to bring it within the jurisdiction of the court. So far as this point is concerned, O. 2, r. 2, (1) of the Civil Procedure Code reads as under: "Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court." This relinquishment in order to bring the suit within the jurisdiction of a court, in our opinion, is clearly before the institution of the suit, and not at any subsequent stage. This is the correct law. We desire to make it clear that if on the date when the suit was instituted the court did not have the requisite pecuniary jurisdiction, it cannot acquire jurisdiction by reason of the plaintiffs relinquishing a portion of the claim. We would refer to the cases of *Govindas Swamy* v. *Kaliaperumal*, 1921 Madras 696 and the case of *Tadi Chandriah* v. *Vitala Seethanna*, 1940 Madras 689.

For the above reasons, we set aside the decrees of the courts below and order that the plaint be returned for presentation to the proper court. The appellants will be entitled to the costs of all the three courts.

Appeal allowed.

Vithal Reddy Ranga Reddy v. The Government of Hyderabad

APPELLATE CIVIL

Before Mr. Justice Mohammed Ahmed Ansari, and Mr. Justice P. Juganmohan Reddy

VITHAL REDDY RANGA REDDY .. .. PETITIONER*

v.

THE GOVERNMENT OF HYDERABAD THROUGH THE COMMISSIONER, EXCESS PROFITS TAX RESPONDENT

Excess Profits Tax Act, Hyderabad, s. 9—Method of accounting—Whether the assessee is entitled to adopt different modes of accounting in the valuation of the stock at the closing and at the opening of each year—Necessity for uniform method of accounting.

The petitioner purchased certain cotton seeds prior to the V.C.A.P. which was valued by him at the close of the IV, C.A.P. at the cost price. In the V, C.A.P., the stock was opened accordingly at the cost price, but the assessee valued the closing stock at the marked rate which was lower than the cost price. The E.P.T. authorities disallowed this method of valuation in view of the fact that in the previous C.A.P. the method adopted by the assessee was to value the opening and the closing stock at the cost price. The petitioner applied under s. 48 of the Excess Profits Tax Act for directing the Commissioner to state a case on the ground that he is entitled to put the market price on the closing stock.

Held, that s. 9 of the Hyderabad Excess Profits Tax Act provides that the profits shall be computed in accordance with the method of accounting regularly employed by the assessee. If a particular method of accounting has been employed by the assessee, the E.P.T. authorities are bound to accept that method of accounting, unless by that method the true income, profits and gains cannot be arrived at. Having adopted a regular method of accounting, the assessee cannot be allowed to change it or depart from it for a particular year or for part of that year or in respect of a particular transaction.

The value of unsold stock in trade is necessary for the computation of profits or losses for any particular period for which such profits or losses are computed. The established principle of commercial accounting, requires that, in the profit and loss account, the value of the trading stock on hand at the beginning and at the end of the accounting year should be entered at the cost or market price, whichever is lower. It is obvious that the closing stock of a year is the opening stock of the next year and the assessee is free to adopt his own method of accounting. He may, instead of valuing the stock at cost price or market price whichever is lower, regularly employ the method of valuing at cost, both at the beginning and at the end of every year irrespective of any fluctuations in the market value, or only at market value irrespective of the question whether such valuation is higher than the cost. But it is clear law that if a trader puts into his account one value at the end of any accounting year, he should open the next year with the same value, as otherwise a true state of affairs cannot be ascertained.

* Petition No. 352 of 1359 F. 27th February 1953.

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Where, on undisputed facts, the proposition of law arising therefrom is well settled, it would be otiose to direct the Commissioner to state a case.

Commissioner of Income-Tax, Madras v. *Chengalvaraya Chetti, 48 Mad. 836*

Commissioner of Income-Tax, Bombay Presidency v. *Ahmedabad New Cotton Mills Co. Ltd., 57 Indian Appeals 21*

Commissioner of Income-Tax, Madras v. *Shri Visweswardas Gokuldas, XIV I.T.R. (1946) 110*

Commissioner of Income-Tax and Excess Profits Tax, Madras v. *Chari and Ram, 1949 I.T.R. 1*

Asher Textiles Ltd., Tirppur v. *Commissioner of Incom-Tax and Excess Profits Tax, Madras, A.I.R. 1953 Mad. 20*

relied on.

B. Subbarayudu, Advocate for Petitioner

N. Narasimha Iyengar, Advocate for Respondent

ORDER

P. JAGANMOHAN REDDY, J.— This is a petition under sub-s. (3) of s. 48 of the E.P.T. Regulation for directing the Commissioner to state a case upon the following two questions:

(1) Whether the assessee is not entitled to put the market price on his closing stock and declare a loss if the market price showed a fall from the purchase price and whether it can be rejected by the Excess Profits Deputy Commissioner as notional?

(2) Whether the Excess Profits Tax Officer and the Deputy Commissioner can estimate the profit on improper grounds and guess work and impose a flat rate ignoring evidence on record?

The learned advocate for the petitioner wishes to press only the first of these questions, as such, this order will be confined only to that question.

It is admitted by both sides that certain cotton seeds were purchased by the assessee prior to the V, C.A.P. which was valued at the close of the IV, C.A.P. at cost price. In the V, C.A.P. the stock was opened accordingly at the cost price and the assessee valued the closing stock at the market rate which was lower than the cost price. The Excess Profits Tax authorities disallowed this method of valuation in view of the fact that in the previous C.A.P. the method adopted by the assessee was to value the opening and closing stocks at cost price. Section 9 of

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the Hyderabad Excess Profits Tax Act, corresponding to s. 13 of the Indian Income-Tax Act, states that "profits shall be computed for the purpose of this Act in accordance with the method of accounting regularly employed by the assessee." If a particular method of accounting has been employed by the assessee, the Excess Profits Tax authorities are bound to accept that method of accounting, unless by that method the true income, profits and gains cannot be arrived at. Having adopted a regular method of accounting, the assessee cannot be allowed to change it or depart from it for a particular year or for part of that year or in respect of a particular transaction. (1933 I.T.R. 219 (P.C.) It was stated by Sir Coutts Trotter, C. J. in the case of *Commissioner of Income-Tax, Madras* v. *Chengalvaraya Chetti and another*, 48 Madras 336 at 340, that the accepted rule is that the assessee in crediting the closing stock figure is to take either the cost price or the market value whichever be the less—a provision obviously intended to be in favour of the trader and which enables him more evenly to distribute his loss. Lord Buckmaster in the case of *Commissioner of Income-Tax, Bombay Presidency* v. *Ahmedabad New Cotton Mills Co. Ltd.*, 57 Indian Appeals 21 & 23, made certain pertinent observations which explain fully the basis upon which the opening and closing stock has to be dealt with. He observed:

> "The method of introducing stock into each side of a profit and loss account for the purpose of determining the annual profits is a method well understood in commercial circles and does not necessarily depend upon exact trade valuations being given to each article of stock that is so introduced. The one thing that is essential is that there should be a definite method of valuation adopted which should be carried through from year to year, so that in case of any deviation from strict market values in the entry of the stock at the close of one year it will be rectified by the accounts in the next year . . . . If the method of altering both valuations is not adopted it is perfectly plain that the profit which is brought forward is not the real one. It may be more or it may be less, but it has no relation to the true profit if the stock is valued on one basis when it goes out without considering the value of the stock when it comes in. When, therefore, there is undervaluation at one end, the effect is to cause both a smaller debit in respect of the stock introduced into the next account and a larger sum for profits realized by the sale, change in market values being immediately reflected in the price obtained for the goods that are sold; in these circumstances to contend that there

should be undervaluation at one end and not at the other is to raise an argument which their Lordships cannot accept."

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In the case of *Messrs. Chouthmal Golapchand*, VI I.T.R 733, Derbyshire, C.J. who was delivering the judgment of the Bench after citing the above observations of Lord Buckmaster, held that when an assessee had adopted a system of valuation at cost price at the end of every year and opening of the next year the cost price of the assets must be taken to have been their value at the beginning of the account year. He further observed:—

"In my opinion, as this stock was at all previous times valued at cost price and was brought into the balance sheet at the beginning of the year at its cost price, then, when it was taken out of the assets of the company, it also should be valued in the same way at the cost price. The system of valuation which the assessees contend for would, it appears to me, have the effect of bringing into the accounts of the year a loss in respect of this stock which had not occurred during the year."

Lionel Leach, C.J. and Patanjali Sastri, J. in the case of *Commisioner of Income-Tax, Madras* v *Shri Visweswardas Gokuldas*, XIV I.T.R. (1946) 110 and Rajamannar, C.J. and Yahya Ali,J. in *Commissioner of Income-Tax & Excess Profits Tax, Madras* v. *Chari & Ram*, 1949 I.T.R. 1, have also held similarly. In the former case the assessee, a merchant, adopted as the method of accounting for income-tax purposes the practice of valuing his stocks at the cost price, both at the beginning and at the end of the year. In the Samvat year 1995, the assessee opened the account with stocks valued at cost price and closed it with a valuation at the market price which was much higher than the cost price. The Income-Tax Officer first accepted it for the said year, but later having discovered his mistake revised the valuation and assessed the assessee on the basis of the cost price of the stock both at the beginning and at the end of the year which resulted in the addition of Rs. 24,855 to the total income. It was held on these facts that in the circumstances of the case, the revision of the closing stock on the basis of the cost price, which was the method adopted by the assessee, was legal. In the recent case of *Asher Textiles Ltd., Tiruppur* v. *Commissioner of Income-Tax and Excess Profits Tax, Madras*, A.I.R. 1953 Madras20, Satyanarayan Rao and Rajagopalan, JJ. have further reinforced the same view.

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It is well to remember that the value of unsold stock in trade is necessary for the computation of profits or losses for any particular period for which such profits or losses are computed. The established principle of commercial accounting requires that in the profit and loss account of a merchant or in a manufacturer's business the value of trading stock in hand at the beginning and at the end of the accounting year should be entered at cost or market price whichever is lower. It is obvious that the closing stock of a year is the opening stock of the next year and the assessee is free to adopt his own method of accounting. He may, instead of valuing the stock at cost price or market price whichever is lower, regularly employ the method of valuing at cost both at the beginning and at the end of every year, (irrespective of any fluctuations in the market value or only at market value) irrespective of the question whether such valuation is higher than the cost. In our view, it is quite certain, and indeed clear law, that if a trader puts into his account one value at the end of any accounting year, he should open the next year with the same value, as otherwise a true state of affairs cannot be ascertained. The petitioner's advocate seeks to draw a distinction on the facts of this case and contends that since the Excess Profits Tax Act was not extended beyond the V, C.A.P., the assessee was entitled to close the stock at the market value, notwithstanding the fact that in the previous years he had valued the opening and closing stock at cost price. This, according to him, is a question of law upon which we should ask the Commissioner of E.P.T. to state a case. The distinction which is sought to be drawn by him is a distinction without a difference. Once it is admitted that the method of accounting which has been followed, is the one upon which the assessment has been based, then the question whether the V, C.A.P. is the last taxable year or the E.P.T. Act has not been extended further, is not material and does not in any way affect the manner of computation of profits. Where on undisputed facts the proposition of law arising therefrom is well settled, it would, in our view, be otiose to direct the Commissioner to state a case. In this view of the matter, we think no useful purpose will be served by directing the Commissioner to state a case.

The application is, therefore, dismissed with costs.

Petition dismissed.

Ranba v. Bansilal

APPELLATE CIVIL

Before Mr. Justice Rai Manohar Pershad and Mr. Justice Vithal Rao Deshpande

RANBA .. .. .. APPELLANT*

v.

BANSILAL AND ANOTHER .. .. RESPONDENTS

Limitation Act, arts. 135 and 139—Mortgaged property leased to the mortgagor—Execution of fresh lease after the lapse of time—Rights of the mortgagee to claim possession or mortgage money—Period of limitation.

The appellant-mortgagor contended that after the expiry of the period of lease when the mortgagee was not put in possession of the property, the mortgagee cannot bring a suit for possession on the basis of the lease but on the mortgage and art. 135 of the Limitation Act would apply. Further, the mortgagee has no right to seek possession but only a right to recover the mortgage amount under s. 68 of the Transfer of Property Act.

Held, that no doubt the renewal of the lease was made after the lapse of 28 days, but when the lease deed has been executed and it has been proved, the relationship of lessor and lessee is again established and it cannot be said that the right to sue on the mortgage had accrued Art. 135 of the Limitation Act applies to suits for possession when the mortgagee claims possession as a mortgagee. As the present suit is based upon the lease, the relevant article applicable to the case is art. 139 and not art. 135.

Further, when the mortgagee is entitled under the terms of the mortgage deed to possession and the mortgagor fails to deliver the same to him, the mortgagee is entitled to sue under s. 68, cl. (d) of the Transfer of Property Act for the mortgage money. He has also other remedies open to him He may sue for damages for breach of the contract to deliver possession or for possession itself.

Tulsiram v. *Sunderlal, 18 Indian Cases 899*

Khunialal v. *Madan Mohan, 31 All. 318*

Des Raj v. *Jai Mal Singh, 57 Indian Cases 269*

Harnam Singh v. *Bhola Singh, A.I.R. 1921 Lah. 309*

Rampadart v. *Nimar Singh, 197 Indian Cases 164*

relied on.

Appeal from the judgment and decree of the Court of the Sessions Judge, Aurangabad, dated 29-2-54 F. in Appeal No. 1/4 of 1354 F. on the file of that court.

Sadasiv Rao, Advocate
Gopal Rao Ekbote, Advocate } for Appellant.

Govind Das Mehta, Advocate for Respondents.

* Civil Appeal No. 417 of 1351 F. 11th February 1953.

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—
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&
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—

JUDGMENT

Bansilal and Pandurang, plaintiffs respondents, filed a suit for the possession of the lands bearing survey Nos. 335 and 360 and for mesne profits against Ranba, the defendant-appellant, with the allegation that the defendant took a loan of Rs. 4,500 for the purchase of the lands and mortgaged the lands bearing survey Nos. 335 and 360 with the agreement that in case the loan is not repaid within a year the plaintiffs would be put into possession of the mortgaged lands. The defendants could not repay the loan, and therefore, in accordance with the terms of the stipulation the plaintiffs were put into possession of the mortgaged lands. The plaintiffs were in possession through their cultivators. On 28th Shehrewar 1338 F. the defendant took the lands on lease for one year and after the expiry of the period he renewed the lease for a further period of one year and promised to hand over possession after the expiry of the period. Though the period has expired but the defendant has neither returned the possession nor has he paid the amount of the lease. The defendant in his written statement denied the allegations of the plaint in toto and alleged that as the defendant is a member of the protected tribe the suit could not proceed in the Civil Court as provided by the Hyderabad Land Restraint and Alienation Act. Another legal objection was also raised that the suit is time-barred. On those pleadings the original court framed certain issues. Parties led evidence. On a consideration of the evidence the original court decreed the plaintiffs' suit. Aggrieved by this the defendant went in appeal which was allowed only to the extent of one year's mesne profits and dismissed to the extent of the possession and the rest of the mesne profits. Hence this second appeal on behalf of the defendant.

2. The main argument advanced on behalf of the appellant is that the suit for possession cannot lie on the basis of the lease deed, as after the expiry of the period of the lease the plaintiffs were not put into possession and the cause of action for the enforcement of the mortgage accrued and if this suit is treated as one based on a mortgage, then in that case also it would be dismissed as being time-barred according to art. 135, Indian Limitation Act. The courts below, he contends, have not considered the case in that light. The second contention is that a suit for possession does not lie, the only remedy for the mortgagee is to file a suit for the recovery of the mortgage amount under s. 68 of the Transfer of Property Act Reliance is placed upon *Hiralal* v. *Ghasitu,* I.L.R. 16 Allahabad 318,

and *Bishun Prasad Ram* v. *Anup Narain Singh*, A.I.R. 1949 Patna 166. Shri Govind Das Mehta on behalf of the respondent in reply urges before us that the suit is based on a lease deed and it is within time. With regard to the argument that a suit for possession does not lie, it is contended that it is not correct to say that a suit for possession does not lie as two remedies are open to a mortgagee. He may either sue for possession or for the recovery of the mortgage amount or for damages. We find sufficient force in the contention of the learned advocate for the respondent.

3. The suit is based on the lease deed dated 25th Khurdad 1339 F. which is for a period of one year, i.e., till 14th Ardibahist 1340 F. The present suit is dated 15th Ardibahist 1352 F. which is within twelve years and it is not disputed by the appellant also. The contention is that the period of the previous lease deed had expired on 27th Ardibahist 1339 F. and the second lease deed was executed on 25th Khurdad 1339 F. i.e., nearly twenty-eight days after the expiry of the period, as such the right to enforce the mortgage had accrued to the plaintiffs on 27th Ardibahist 1339 F. and if this date is taken as the starting point of limitation then the suit becomes time-barred according to art. 135 of the Limitation Act. We are afraid, we cannot accept this contention. It is true that the renewal of the lease was made after a lapse of twenty-eight days but when the lease deed has been executed and it has been proved, the relationship of lessor and lessee is again established, and thus it cannot be said that the right to sue on the mortgage had accrued. Article 135 of the Limitation Act would apply to suits for possession when the mortgagee claims possession as a mortgagee. It is not so in the present case. Hence art. 135 of the Indian Limitation Act is not applicable to the present case and art. 139 of the Limitation Act would be applicable. We are supported in our view by the cases of *Tulsiram* v. *Sunderlal*, 18 Indian Cases 899, *Khunialal* v. *Madan Mohan*, 31 Allahabad 318, *Des Raj* v. *Jai Mal Singh*, 57 Indian Cases 269 and *Ganpat Rai* v. *Jeevanlal*, 1890 Punjab Record 114, where it has been held that where the mortgagee leases the property to the mortgagor and subsequently sues him for ejectment the claim for possession is not by mortgagee as such and consequently art. 135 would not apply but art. 139 would be applicable. The cases cited by the learned advocate for the appellant do not apply to the facts of the case and are not at all helpful to him. *Bishun Prasad Ram* v. *Anup Narain Singh*, A.I.R. 1949 Patna 166, was a case where the plaintiff had brought a suit against the defendants for ejectment from

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two houses and for the recovery of Rs. 274-1-0 alleging that he was a *rehandar*. The plaintiff's case was that he was not given possession of the houses on the understanding that the defendants-mortgagors will hold and occupy them as tenants of the mortgagee on payment of the monthly rent of Rs. 2. Along with the deed of mortgage this agreement was arrived at between the parties. In pursuance of this agreement the defendants executed a *kabuliat* embodying the aforesaid terms. The usufructuary mortgage was for a term of five years from the month of Asarh 1335, to the month of Jeth 1340 F. while the *kabuliat* acknowledging the tenancy was for a term of four years from the month of Asarh 1335 to the month of Jeth 1339 F. On expiry of the term of the tenancy, the plaintiff wanted to enter into possession of the houses, but, as it is alleged by the plaintiff, the defendants made a request to allow them to remain in the house on payment of an enhanced rent of Rs. 5 per month. This request was agreed to and the defendants occupied the said houses from the month of Asarh 1339 F. on the fixed rent of Rs. 5 per mensem and had been paying the same upto the month of Bhado 1346. The defendants were called upon by the plaintiff to execute a fresh *kabuliat*, but they raised objection on the ground that they would be put to unnecessary expense. The defendants in contravention of the agreement having failed to pay the agreed rent, the plaintiff served them with a notice to quit calling upon them to give vacant possession of the houses as the alleged tenancy had terminated. The defendants resisted the plaintiff's claim impugning the real character of the *rehan* and repudiating the relationship of landlord and tenant and challenging the maintainability of the suit. It was held that there was no relationship of landlord and tenant between the parties after the expiry of the term of the mortgage. Consequently, the remedy of the mortgage was under s. 68 for the recovery of the mortgage money and not by way of suit for possession or for recovery of rent in lieu of interest. This case is clearly distinguishable from the present case. In the case before us there is no period fixed for payment and the condition is that whenever the principal amount and interest will be paid the mortgage will be redeemed. In other words the mortgagee is entitled to the possession of the mortgage property till the payment of the mortgage money. In the case of *Hiralal* v. *Ghasitu*, 16 Allahabad 318, the mortgagee himself had filed a suit for the mortgage money under s. 68 of the Transfer of Property Act and did not claim possession, so the question whether he could sue for possession or not, did not arise. Still Banerji, J. in his judgment has expressed his view in the following words:

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"By the terms of the mortgage deed the mortgagees were entitled to remain in possession until the repayment of the mortgage money, and the mortgagor was liable not only to deliver possession to the mortgagees but to secure to them quite and undisturbed possession. For a breach of that obligation the remedy of the mortgagees was twofold. They could either sue the mortgagor to recover possession of the mortgaged property, or they could bring a suit to recover the mortgage money. This last remedy is given to them by s. 68 of Act No. IV of 1882."

Thus, this case also does not help the contention of the appellant; on the contrary it supports the case of the respondents.

4. After this, we turn to the other argument which relates to s. 68 of the Transfer of Property Act. The contention is that no suit for possession lies and the only remedy open to the plaintiff is to enforce the mortgage by filing a suit for the recovery of the mortgage amount under s. 68 of the said Act. We are afraid, we cannot accept this either. There is nothing in law to prevent the mortgagee from filing a suit for possession on the basis of a lease-deed. When the mortgagee is entitled under the terms of the mortgage to possession and the mortgagor fails to deliver the same to him the mortgagee is entitled to sue under s. 68 cl. (d) of the Transfer of Property Act for the mortgage money. He has also other remedies open to him. He may sue for damages for breach of the contract to deliver possession or may sue for possession. We are supported in this view by the cases: *Harnamsingh* v. *Bholusing*, A.I.R. 1921 Lahore 309, *Thakur Chowdry* v. *Manrup Mahaton*, 16 Indian Cases 735, *Rampadart* v. *Nimarsingh*, 197 Indian Cases 164. Thus, it cannot be said that the mortgagee is not entitled to sue for possession of lands.

5. Thus, after giving a careful consideration we are of the opinion that there is no force in this appeal and it should be dismissed. Appeal is, therefore, dismissed with costs.

Appeal dismissed.

Konkimalla Veeresham v. Pudduturi Vajrama — L. S. Misra, C. J.

APPELLATE CIVIL

Before Mr. Lakshmi Shankar Misra, Chief Justice

KONKIMALLA VEERESHAM .. .. PETITIONER*

v.

PUDDUTURI VAJRAMA .. .. RESPONDENT

Civil Procedure Code, O. 7, r. 18—Presentation of plaint without suit document—Production of the document after the period of limitation—Effect—Findings on issues—Practice.

In a suit on a promissory note, the promissory note was not filed along with the plaint and on the date on which it was brought on record, the limitation for filing the suit had expired. It was contended on behalf of the petitioner that under the provisions of O. 7, r. 18 of the Civil Procedure Code, the plaint must be deemed not to have been presented on the date on which it was actually filed but should be deemed to have been presented on the date on which the promissory note was filed and as such it was barred by time.

Held, that under O 7, r. 18, a document which ought to be produced by the plaintiff when the plaint is presented and which is not so produced, should not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit. A very wide discretion is thus vested in the court in connection with the reception of a document which did not accompany the plaint. The presentation of plaint and the acceptance in evidence of a supporting document are two different things. There is nothing in the Code which would render the plaint unaccompanied by the supporting documents ineffective or its presentation void. Therefore, the suit is not barred by limitation.

There is no warrant in the Code for deciding issues piece-meal unless the court decides to apply O. 14, r. 2 which is an exceptional provision applicable to cases when the point of law raised is likely in the opinion of the court to be fatal to the suit or the defence. As a general rule, when a number of issues arise in a case, it is the duty of the trial court to give its findings on all issues in order to avoid a remand. To enter upon each question separately and then to bring the finding thereon to this court either by way of revision or appeal is wholly wrong. The practice cannot be deprecated too strongly, for, besides being unauthorised, it also results in holding up the decision of the case for unconscionably long periods.

Revision against the order of the Court of the Sub-Judge, Karimnagar, dated 23-2-1953 in Case No. 33/1 of 1953 on the file of that court.

Vaimgani Madhav Rao, Advocate for Petitioner.

.. .. for Respondent.

ORDER

LAKSHMI SHANKAR MISRA, C. J. — I have heard the applicant's learned counsel and I am definitely of the opinion

* Civil Admission No 970/B 5/2 of 1952-53. 18th March 1953.

(*ii*) the term of office of the members of the Hyderabad Labour Housing Corporation, the allowances, if any, payable to them, the manner in which the Corporation, shall conduct its business including the number of members necessary to form a quorum at a meeting thereof and the minimum number of meetings of the Corporation ;

(*iii*) the records to be kept of the transaction of business by the Corporation and the Local Committees ;

(*iv*) the powers and duties of officers appointed under section 7 and the conditions of their service ;

(*v*) the procedure to be adopted in the execution of any contracts ;

(*vi*) the acquisition, holding and disposal of property by the Corporation ;

(*vii*) the raising and repayment of loans and the repayment of the sums due to the Government ;

(*viii*) the investment of funds of the Corporation and of any provident or other benefit fund and their transfer or realisation ;

(*ix*) the treasury, or the bank or banks in which the funds of the Corporation may be deposited, the procedure to be followed in regard to the crediting of moneys accruing or payable to the Corporation and the manner in which any sums may be paid out of the Corporation funds and the officers by whom such payments may be authorized ;

(*x*) the accounts to be maintained by the Corporation and the forms in which such accounts shall be kept and the times at which such accounts shall be audited ;

(*xi*) the publication of the accounts of the Corporation and the report of the auditors, the action to be taken on the audit report, the powers of auditors to disallow and surcharge items of expenditure and the recovery of sums so disallowed or surcharged ;

(*xii*) the preparation of budget estimates and of supplementary estimates and the manner in which such estimates shall be sanctioned and published ;

(*xiii*) the establishment and maintenance of provident or other benefit fund for officers and servants of the Corporation ;

(*xiv*) the returns to be submitted by any employer or owner, the form in which and the items at which such returns shall be submitted and the particulars to be given in such returns ;

(*xv*) the appointment of persons to ensure compliance with any rules or orders and the powers and duties of such persons ;

(*xvi*) the management and use of the buildings constructed under any Housing Scheme ;

(*xvii*) the principles to be followed in the allotment of houses and premises ;

(*xviii*) any matter which is required or allowed by this Act to be prescribed.

(3) Rules made under this section shall be published in the Jarida and thereupon shall have effect as if enacted in this Act.

Power of the Corporation to make regulations

43. (1) The Corporation may, subject to the condition of previous publication, make regulations not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation and for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :—

(*i*) the duties and powers of inspectors and other officers and servants of the Corporation;

(*ii*) the conditions of service of the officers and servants of the Corporatian other than the officers appointed under section 7; and

(*iii*) any matter in respect of which regulations are required or permitted to be made by this Act.

(3) Regulations made under this section shall be published in the Jarida and thereupon shall have effect as if enacted in this Act.

THE HYDERABAD CHILDREN'S PROTECTION (AMENDMENT) ACT, 1952

No. XXXVII of 1952

[Received the assent of the Rajpramukh on 10th December, 1952]

An Act to amend the Hyderabad Children's Protection Act No. IX of 1343 Fasli

Preamble.

WHEREAS it is expedient to amend the Hyderabad Children's Protection Act (IX of 1343 F.) for the purposes hereinafter appearing;

IT is hereby enacted as follows :—

Short title and commencement.

1. (1) This Act may be called the Hyderabad Children's Protection (Amendment) Act, 1952.

(2) It shall come into force at once.

Amendment of section 4, Hyderabad Act IX of 1343 F.

2. In section 4 of the Hyderabad Children's Protection Act (IX of 1343F.) for the definition of "District Officer" the following definition shall be substituted, namely :—

" 'District Officer' means the Collector of the District or in the case of the Cities of Hyderabad and Secunderabad such officer as may be appointed by Government in this behalf.

THE COMMITTEES OF INQUIRY (EVIDENCE) (REPEALING) ACT, 1952

No. XXXVIII of 1952

An Act to repeal the Committees of Inquiry (Evidence) Act, 1356 Fasli

WHEREAS in consequence of the enactment of the Commissions of Inquiry Act, 1952 (Central Act, No. LX of 1952), it is expedient to repeal the Committees of Inquiry (Evidence) Act, 1356 Fasli (Hyderabad Act No. XVIII of 1356 Fasli); Preamble.

IT is hereby enacted as follows :—

1. (1) This Act may be called the Committees of Inquiry (Evidence) (Repealing) Act, 1952. Short title, extent and commencement.

(2) It extends to the whole of the State of Hyderabad.

(3) It shall come into force at once.

2. The Committees of Inquiry (Evidence) Act, 1356 Fasli, is hereby repealed. Repeal of Hyderabad Act XVIII of 1356 F.

THE HYDERABAD CIVIL COURTS (AMENDMENT) ACT, 1952

No. XXXIX of 1952

An Act to amend the Hyderabad Civil Courts Act

WHEREAS it is expedient to amend the Hyderabad Civil Courts Act (No. II of 1324 Fasli), for the purposes hereinafter appearing ; Preamble.

IT is hereby enacted as follows: —

1. (1) This Act may be called the Hyderabad Civil Courts (Amendment) Act, 1952. Short title and commencement.

(2) It shall come into force from the date of its publication in the Jarida.

2. In clause (5) of section 9 of the Hyderabad Civil Courts Act (hereinafter referred to as the said Act), for the words "one thousand" the words "two thousand" shall be substituted. Amendment of section 9 A, Hyderabad Act II of 1324 F.

3. In section 9 A of the said Act—

(1) in clause (*b*) for the words "one thousand" and "two thousand" the words "two thousand" and "four thousand" shall be respectively substituted ; and Amendment of section 9 A, Hyderabad Act II of 1324 F.

(2) the second proviso shall be omitted.

4. Notwithstanding anything contained in this Act, any suit or proceeding which was pending in any court of competent jurisdiction immediately before the commencement of this Act shall, subject to any general or special orders of the High Court, be continued and disposed of by the court in which it was pending immediately before such commencement. Savings.

THE HYDERABAD COMPULSORY PRIMARY EDUCATION ACT, 1952

No. XL of 1952

[Received the assent of the Rajpramukh on the 18th December, 1952]

An Act to provide for Free Compulsary Primary Education in the State of Hyderabad.

Preamble.

WHEREAS it is expedient to provide for free compulsory primary education in pursuance of the declared policy of Government that universal, free and compulsory primary education should be introduced in the State of Hyderabad by a definite programme of progressive expansion;

IT is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Hyderabad Compulsory Primary Education Act, 1952

(2) It extends to the whole of the State of Hyderabad.

(3) It shall come into force in such areas and from such dates as the Government may, by notification in the Jarida, appoint and different dates may be appointed for different areas.

Definitions.

2. In this Act, unless there is anything repugnant in the subject of context—

(*i*) "approved school" means a school maintained by the Government or a part of such school in which primary education up to any standard imparted, and at which no fee is charged for instruction;

(*ii*) "areas of compulsion" means the area in which primary education up to any standard, is compulsory;

(*iii*) "child" means a boy or girl whose age is not less than six and not more than eleven years, at the beginning of the school year;

Explanation:—For the purpose of this definition, school year means the year beginning on such date as the Director may fix.

(*iv*) "director" means the Director of Public Instruction of the State of Hyderabad;

(*v*) "guardian" includes the parent and any person who has the actual custody and care of a child;

(*vi*) "local committee" means the Committee constituted under section 3;

(*vii*) "prescribed" means prescribed by rules made under this Act;

(*viii*) "primary education" means education in such subjects and up to such standard as may be determined by the Government, from time to time;

(*ix*) "recognised school" means a school or a part of such school, other than an approved school or a special school, in which primary education up to any standard is imparted, and which is, for the time being, recognised by the Director, irrespective of whether fee for instruction is or is not charged therein;

(*x*) "school" means an approved school, a special school or a recognised school;

(*xi*) "special school" means a school maintained by the Government or a part of such school in which primary education up to any standard is imparted, and which is permitted to charge fee for instruction;

(*xii*) "to attend" used with reference to a school means to be present for instruction at the school on such dates and for such time and for such periods of each day as may be required under regulations framed by the Local Committee for that area with the approval of the Director.

Constitution of Local Committees.

3. (1) For each area of compulsion, or two or more such areas which are contiguous, Government shall appoint a Local Committee.

(2) The composition of the Local Committee, the procedure of nomination and removal of its members, their term of office, their qualifications and disqualifications for continuing as members, the filling up of vacancies, the dissolution of the Local Committee and the procedure for the conduct of its business, shall be such as may be prescribed.

Power of Director or other officer to attend meetings of Local Committees.

4. The Director or an officer nominated by him for this purpose shall have power to attend the meetings of the Local Committees or to call a meeting of the Local Committee to discuss and advise the authorities concerned on matters connected with compulsory primary education in the area, provided however that he shall not vote at such meetings.

Powers, duties and functions of the Local Committees.

5. Subject to the provisions of this Act and the rules made thereunder, the Local Committee shall exercise and discharge the following powers and functions, namely :—

(*i*) to determine the exact location of primary schools in its area of compulsion;

(*ii*) to carry on propaganda for the spread of primary education among the children of its area of compulsion;

(*iii*) to recommend to the Director any changes which may seem to the Local Committee to be necessary, in the hours of work, holidays and vacations in the schools in its area;

(*iv*) to make arrangements to provide such facilities as may be prescribed for the poor children attending schools in its area;

(*v*) to grant exemptions from compulsory attendance at schools under this Act;

(*vi*) to maintain an up-to-date list of children liable to attend school in its area and to obtain and keep a record of such other information as may be necessary for the purpose of enforcing the attendance of children at school, and of preventing interference with such attendance;

(*vii*) to render all necessary help to Government officials engaged in the work of compulsory primary education in its area.

Obligation of the guardian to send children to school.

6. Where a notification under sub-section (3) of section 1 is in force in any area, every guardian of a child shall, if such guardian ordinarily resides in such area, cause the child to attend a school.

Exemption from attendance.

7. (1) Where there is reasonable excuse for non attendance of a child at a school, the guardian of the child may apply to the Local Committee for a certificate of exemption

(2) A child may be exempted from compulsory attendance at school under this Act:—

(a) when there is no school within a distance of one mile measured along the nearest road from the residence of the child,

(b) where it is impracticable or inexpedient to attend the school on account of illness, disease, injury, affliction, infirmity or any other cause whether of a like nature or not which is regarded as sufficient by the Local Committee, subject to such restrictions as may be prescribed in this behalf. or

(c) on such other grounds as may be prescribed.

(3) An appeal against an order refusing to grant a certificate of exemption from attendance at school, shall lie to the Director whose decision shall be final.

Issue of attendance order.

8. When a Local Committee has reason to believe that a guardian of a child who is bound, under the provisions of this Act to cause the child to attend a school, has failed to do so, or that any person, other than the guardian, is utilising the time or services of a child in connection with an employment whether for remuneration or not, in any such way or at such time as to interfere with the attendance of the child at a school, it shall make an order directing the guardian or such other person to cause such child to attend school on and from a date specified in the order, or as the case may be to refrain from utilising the services of a child from such date so as not to interfere with his attendance at the school.

Penalty for failure to cause a child to attend school.

9. (1) When a Local Committee is satisfied that a guardian has failed to cause his child to attend school or that any other person is interfering with such attendance of a child, even after the issue of an attendance order under section 8, it shall report the matter to the Inspector of Schools, who shall cause a complaint to be lodged against such a guardian or other person, with the Magistrate having local jurisdiction.

(2) Any person proved, to the satisfaction of the Magistrate, to have contravened an attendance order passed under section 8, shall be liable to a fine not exceeding five rupees and to a further fine not exceeding annas eight per day if such contravention continues after the first conviction.

Provision of free education by State Government.

10. Arrangements shall be made by Government to provide free instruction in approved schools for children whose attendance at school under this Act is made compulsory and whose guardians do not arrange for their instruction in special schools or recognised schools.

Inspection of offices, books and accounts of Local Committees.

11. The office, books and accounts of every Local Committee, shall be open to inspection by the concerned officers of the Education Department.

Power to make rules.

12. Government may by notification in the Jarida make rules to carry out the purposes of this Act and in particular and without prejudice to the generality of the foregoing power such rules may provide for anything which may be prescribed under this Act.

13. All previous enactments, rules and regulations in force in the matter of compulsory primary education, are hereby repealed. Repeal.

THE HYDERABAD MUNICIPAL CORPORATIONS (SECOND AMENDMENT) ACT, 1952

No. XLI of 1952

An Act to amend the Hyderabad Municipal Corporations Act, 1950.

WHEREAS it is expedient to amend the Hyderabad Municipal Corporations Act, 1950, for the purposes hereinafter appearing; Preamble.

IT is hereby enacted as follows:—

1. (1) This Act may be called the Hyderabad Municipal Corporations (Second Amendment) Act, 1952. Short title and commencement.

(2) It shall be deemed to have come into force immediately after the commencement of the Hyderabad Municipal Corporations Act, 1950.

2. For clause (30) of section 418 of the Hyderabad Municipal Corporations Act, 1950, the following clause shall be substituted, namely:— Amendment of section 418, Hyderabad Act, XXXVI of 1950.

"(30) the registration of vehicles (other than motor vehicles and those exempted from taxation under section 132) and the licensing of the drivers of such vehicles, whether plying for hire or kept for private use within the limits of the jurisdiction of the Corporation, the seizure and detention of any such vehicle which has not been duly registered and the fixation of fees payable for such registration and licenses and the conditions on which they may be made, granted and revoked;"

THE HYDERABAD VILLAGE PANCHAYAT (AMENDMENT) ACT, 1952

No. XLII of 1952

An Act to amend the Hyderabad Village Panchayat Act, 1951.

WHEREAS it is expedient to amend the Hyderabad Village Panchayat Act, 1951, for the purposes hereinafter appearing; Preamble.

IT is hereby enacted as follows:—

1. (1) This Act may be called the Hyderabad Village Panchayat (Amendment) Act, 1952. Short title, and commencement.

(2) Section 3 shall be deemed to have come into force immediately after the commencement of the Hyderabad Village Panchayat Act 1951; the rest of the Act shall come into force at once.

2. In clause (*k*) of section 2 of the Hyderabad Village Panchayat Act, 1951 (hereinafter referred to as the said Act),— Amendment of section 2 Hyderabad Act, VIII of 1951.

(1) the word 'and' at the end of sub-clause (*iii*) shall be omitted and the following sub-clause shall be inserted after the said sub-clause, namely :—

"(*iv*) any group of local areas consisting of a village as defined in sub-clause (*i*), (*iii*) or (*v*) and its adjoining unit or units of local areas having, according to the last official census, a population of less than 1,000 for each such unit and a total population of not more than 5,000 for such group, which the Government may, by notification, specify by name and declare to be a village for the purposes of this Act; and;" and

(2) sub-clause (*iv*) shall be renumbered as sub-clause (*v*).

Insertion of a new section 4-A, Hyderabad Act, VIII of 1951.

3. After section 4 of the said Act the following section shall be inserted as section 4–A, namely :—

"Division of a Panchayat village into constituencies'

4–A. After the declaration of a village as a Panchayat village, the Deputy Collector shall, by order, determine :—

(*a*) the constituencies into which the village shall be divided for the purpose of election to the Village Panchayat;

(*b*) the extent of each constituency; and

(*c*) subject to the provisions of section 4, the number of elected members allotted to each constituency."

THE HYDERABAD CONTINGENCY FUND ACT, 1952

No. XLIII of 1952

An Act to provide for the establishment of a Contingency Fund for the State of Hyderabad.

Preamble.

WHEREAS Article 267, Clause (2), of the Constitution of India, provides that the Legislature of a State may by law establish a Contingency Fund in the nature of an imprest;

AND WHEREAS it is expedient to establish such a Contingency Fund for the State of Hyderabad;

IT is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called the Hyderabad Contingency Fund Act, 1952.

(2) It shall come into force at once.

Establishment of the Contingency Fund of the State of Hyderabad.

2. There shall be established a Contingency Fund in the nature of an imprest entitled the Contingency Fund of the State of Hyderabad, into which shall be paid from and out of the Consolidated Fund of the State a sum of I.G. one crore of rupees.

Custody of the Contingency Fund

3. The Contingency Fund of the State of Hyderabad shall be held on behalf of the Rajpramukh by the Secretary to the Government of Hyderabad

in the Department of Finance, and no advances shall be made out of such Fund except for the purpose of meeting unforeseen expenditure pending authorisation of such expenditure by the Hyderabad Legislative Assembly under appropriations made by Law.

and withdrawals there from.

4. For the purpose of carrying out the objects of this Act, the State Government may make rules regulating all matters connected with or ancillary to the custody of, the payment of moneys into and the withdrawals of moneys from, the Contingency Fund of the State of Hyderabad.

Power to make rules.

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THE HYDERABAD LAND REVENUE (SECOND AMENDMENT) ACT, 1952

No. XLIV of 1952

[Received the assent of the Rajpramukh on the 22nd December 1952]

An Act further to amend the Hyderabad Land Revenue Act No. VIII of 1317 F.

WHEREAS it is expedient further to amend the Hyderabad Land Revenue Act (VIII of 1317 F) for the purposes hereinafter appearing;

Preamble.

IT is hereby enacted as follows:—

1. (1) This Act may be called the Hyderabad Land Revenue (Second Amendment) Act, 1952.

Short title and commencement.

(2) It shall come into force at once.

2. Chapter III of the Hyderabad Land Revenue Act (No. VIII of 1317 F.) (hereinafter referred to as the said Act), shall be omitted.

Omission of Chapter III Hyderabad Act VIII of 1317 F.

3. After section 37 of the said Act the following section shall be inserted, namely:—

Insertion of a new section 37 A, Hyderabad Act VIII of 1317 F.

"37A. (1) The Pattadar tenant or any other person, in actual possession of land on which any toddy or sendhi tree stands must report in writing or in case where he does not know writing, orally to the Patel or Patwari of the village any case of tapping of such tree as soon as possible after he becomes aware of such tapping and on receipt of the information by the Patel or Patwari, as the case may be, he must issue written acknowledgement thereof to the reporter, and in case of illegal tapping, he must report the same to the Abkari authorities concerned.

Duty of pattadar or tenant to report illegal tapping of toddy and sendhi trees.

(2) Any contravention of sub-section (1) shall be punishable with fine which may extend to the amount of the tree-tax payable, in respect of the tree illegally tapped, in accordance with the laws and rules for the time being in force."

Insertion of a new section 46 A, Hyderabad Act VIII of 1317 F.

4. After section 46 of the said Act the following section shall be inserted, namely :—

Restrictions on felling of sendhi, toddy and gulmohva trees.

"46A. (1) Notwithstanding anything contained in sections 34 and 38 the Government may by notification in the Jarida prohibit or regulate the felling of sendhi, toddy and gulmohva trees in such area and subject to such conditions and restrictions as may be specified in the notification

(2) No notification shall be made under sub-section (1) until after the issue of a general notice to the owners of such trees in the local area concerned calling upon them to show cause within a reasonable period to be specified in such notice why such notification should not be made and until their objections, if any, and any evidence that they may produce in support of the same have been heard by an officer duly appointed by Government in that behalf and have been considered by the Government.

(3) The notification referred to in sub-section (1) shall be published in the locality, and the notice referred to in sub-section (2) shall be served, in such manner as may be laid down by rules made under this Act.

(4) The Government may by order delegate its powers under sub-sections (1) and (2) to the Collector or such other officer as the Government thinks fit subject to such conditions and restrictions, if any, as may be specified in the order.

(5) If any tree mentioned in sub-section (1) is cut in contravention of any prohibition, condition or restriction imposed under that sub-section, the Pattadar of the land on which the tree stood or where the Pattadar has not cut or authorised the cutting of the tree any other person who has cut or authorised the cutting thereof shall be liable to a penalty not exceeding the market value of the tree as determined by the Collector and such penalty shall be recoverable from the Pattadar or such other person, as the case may be, as an arrear of land revenue and the tree shall be forfeited to Government by order of the Collector.

(6) The powers of the Collector under sub-section (5) may be exercised by any other officer who is authorised by Government in this behalf."

Amendment of section 172, Hyderabad Act VIII of 1317 F.

5. After clause *(f)* of sub-section (2) of section 172 of the said Act the following clause shall be inserted, namely :—

"*(f1)* to prescribe the manner of publication of the notification and of the service of the notice referred to in sub-section (3) of section 46A ;" and

clause *(c)* of the said sub-section shall be omitted.

THE HYDERABAD AGRICULTURAL IMPROVEMENT FUND ACT, 1952

No. XLV of 1952

An Act to provide for the establishment of the Agricultural Improvement Fund for the State of Hyderabad

WHEREAS it is expedient to establish a Fund for the State of Hyderabad for the purpose of agricultural improvements · Preamble

IT is hereby enacted as follows:—

1. (1) This Act may be called the Hyderabad Agricultural Improvement Fund Act, 1952. Short title and commencement.

(2) It shall come into force at once.

2. There shall be established a Fund in the nature of an imprest entitled the Agricultural Improvement Fund of the State of Hyderabad into which shall be paid, from and out of the consolidated Fund of the State such moneys as may be collected from time to time, by way of licence fees under clause 8 of the Foodgrains (Licensing and Procurement) Order, 1952. Establishment of the Agricultural Improvement Fund of the State of Hyderabad.

3. (1) The Agricultural Improvement Fund of the State of Hyderabad shall be held on behalf of the Rajpramukh by the Secretary to the Government of the Hyderabad in the Department of Finance. Custody of the Agricultural Improvement Fund and withdrawals therefrom.

(2) No advances shall be made out of such Fund except for the purpose of meeting such expenditure as may be prescribed by rules made under this Act and without the authorisation of the Minister in charge of Agriculture who shall be assisted by a Committee consisting of the Secretary in charge of Agriculture, the Secretary in charge of the Finance Department, the Director of Agriculture and three members of Hyderabad Legislative Assembly nominated by the Government.

4. For the purpose of carrying out the objects of this Act, the State Government may make rules regulating all matters connected with or ancillary to the custody of the payment of moneys into and the withdrawals of moneys from, the Agricultural Improvement Fund of the State of Hyderabad. Power to make rules.

THE HYDERABAD CINEMAS (REGULATION), ACT, 1952

No. XLVI of 1952

[Received the assent of the Rajpramukh on the 29th December 1952]

An Act to repeal and re-enact with modifications the Hyderabad Cinematograph Act, 1952.

WHEREAS in consequence of the enactment of the Cinematograph Act, 1952 (Central Act XXXVII of 1952) it is expedient to repeal and re-enact with modifications the Hyderabad Cinematograph Act, 1952; Preamble.

IT is hereby enacted as follows:—

1. (1) This Act may be called the Hyderabad Cinemas (Regulation) Act, 1952. Short title, extent and commencement.

(2) It extends to the whole of the State of Hyderabad.

(3) It shall come into force on such date as the Government may, by notification in the Jarida, appoint.

Definitions. 2. In this Act unless there is anything repugnant in the subject or context,—

(a) "cinematograph" includes any apparatus for the representation of moving pictures or series of pictures;

(b) "Collector," in relation to the cities of Hyderabad and Secunderabad, means the Commissioner of Police;

(c) "place" includes a house, building, tent and any description of transport, whether by river, land or air;

(d) "prescribed" means prescribed by rules made under this Act.

Cinematograph exhibitions to be licensed. 3. Save as otherwise provided in this Act, no person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under this Act or otherwise than in compliance with any conditions and restrictions imposed by such licence.

Licensing authority 4. The authority having power to grant licences under this Act (hereinafter referred to as the licensing authority) shall be the Collector:

Provided that the Government may, by notification in the Jarida, constitute, for the whole or any part of the State of Hyderabad. such other authority as it may specify in the notification to be the licensing authority for the purposes of this Act.

Restrictions on powers of licensing authority. 5. (1) The licensing authority shall not grant a licence under this Act, unless it is satisfied that—

(a) the rules made under this Act have been substantially complied with, and

(b) adequate precautions have been taken in the place, in respect of which the licence is to be given, to provide for the safety of persons attending exhibitions therein.

(2) Subject to the foregoing provisions of this section and to the control of the Government, the licensing authority may grant licences under this Act to such persons as that authority thinks fit and on such terms and conditions and subject to such restrictions as it may determine.

(3) Any person aggrieved by the decision of a licensing authority refusing to grant a licence under this Act may, within such time as may be prescribed, appeal to the Government or to such officer as the Government may specify in this behalf and the Government or the officer, as the case may be, may make such order in the case as it or he thinks fit.

(4) The Government may, from time to time, issue directions to licensees generally or to any licensee in particular for the purpose of regulating the exhibition of any film, or class of films, so that scientific films, films intended for educational purposes, films dealing with news and current events, documentary films or indigenous films secure an adequate opportunity of being exhibited, and where any such directions have been issued those directions shall be deemed to be additional conditions and restrictions subject to which the licence has been granted.

6. (1) The Government in respect of the whole of the State of Hyderabad or any part thereof and the Collector in respect of the area within his jurisdiction may, if he is of opinion that any film which is being publicly exhibited is likely to cause a breach of the peace, by order, suspend the exhibition of the film and during such suspension the film shall be deemed to be an uncertified film in the State, part or area, as the case may be.

Power of Government or Collector to suspend exhibition of films in certain cases.

(2) Where an order under sub-section (1) has been issued by the Collector, a copy thereof, together with a statement of reasons therefor shall forthwith be forwarded by him to the Government, and the Government may either confirm or discharge the order.

(3) An order made under this section shall remain in force for a period of two months from the date thereof, but the Government may, if it is of opinion that the order should continue in force, direct that the period of suspension shall be extended by such further period as it thinks fit.

7. If the owner or person in charge of a cinematograph uses the same or allows it to be used, or if the owner or occupier of any place permits that place to be used in contravention of the provisions of this Act or of the rules made thereunder, or of the conditions and restrictions upon or subject to which any licence has been granted under this Act, he shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing offence, with a further fine which may extend to one hundred rupees for each day during which the offence continues.

Penalties for contravention of this Act.

8. Where the holder of a licence has been convicted of an offence under section 7 of the Cinematograph Act, 1952 (Central Act XXXVII of 1952) or under section 7 of this Act, the licence may be revoked by the licensing authority.

Power to revoke licence.

9. (1) The Government may, by notification in the Jarida, make rules for the purpose of carrying into effect the provisions of this Act,

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing powers, rules made under this Act may provide for :—

(*a*) the terms, conditions and restrictions, if any, subject to which licences may be granted under this Act ;

(*b*) the regulation of cinematograph exhibitions for securing public safety :

(*c*) the time within which and the conditions subject to which an appeal under sub-section (3) of section 5 may be preferred.

10. The Government may, by order in writing, exempt, subject to such conditions and restrictions as it may impose, any cinematograph exhibition or class of cinematograph exhibitions from any of the provisions of this Act or of any rules made thereunder.

Power to exempt.

11. The Hyderabad Cinematograph Act, 1952, is hereby repealed:

Provided that all rules made or deemed to be made and all notifications, orders and licences issued or deemed to be issued under the said Act, which were in force immediately before the commencement of this Act, so far as they could validly have been made or issued under this Act, shall continue in force and be deemed to have been made or issued under this Act until they are superseded or modified by any competent authority under this Act.

Repeal and savings.

THE HYDERABAD GENERAL SALES TAX (FIFTH AMENDMENT) ACT 1952

No. XLVII of 1952

An Act further to amend the Hyderabad General Sales Tax Act, 1950

Preamble.

WHEREAS it is expedient further to amend the Hyderabad General Sales Tax Act, 1950 (Hyderabad Act XIV of 1950) for the purposes hereinafter appearing;

IT is hereby enacted as follows :—

Short title and commencement.

1. (1) This Act may be called the Hyderabad General Sales Tax (Fifth Amendment) Act, 1952.

(2) It shall come into force on such date as Government may by notification in the Jarida appoint in this behalf.

Amendment of section 6, Hyderabad Act, XIV of 1950.

2. In section 6 of the Hyderabad General Sales Tax Act, 1950 (hereinafter referred to as the said Act), for the words beginning with "as is attributable to transactions" and ending with the words "two rupees only in one hundred rupees," the following shall be substituted, namely :—

"as is attributable to transactions in—

(*a*) gold and silver bullion, and

(*b*) precious stones including unset precious stones, pearls, real and cultured, imitation precious stones and gold or silver gota, lace and salma, shall, in respect of the articles mentioned in clauses (*a*) and (*b*) be leviable at the rates of four annas and two rupees respectively in one hundred rupees."

Amendment of section 8, Hyderabad Act, XIV of 1950.

3 In section 8 of the said Act, after sub-section (2), the following sub-section shall be inserted, namely :—

"(3) Notwithstanding anything contained in sub-section (1), the turnover of the dealers in Sendhi, Toddy, Liquor, Opium, Ganja and Bhang and other prescribed dealers will be calculated for such period of twelve months as may be fixed by the Government and licences to them for purposes of this section shall be issued accordingly."

Amendment of section 13, Hyderabad Act, XIV of 1950.

4. In section 13 of the said Act—

(1) for the marginal note, the following marginal note shall be substituted, namely :—

"Payment and recovery of tax and other dues payable under the Act"; and

(2) after sub-section (2) the following sub-section shall be inserted, namely : —

"(3) All other dues payable under this Act, such as licence fees, registration fees, and compounding fees remaining unpaid may, without prejudice to any other modes of recovery, be recoverable as arrears of land revenue."

Amendment of section 26, Hyderabad Act, XIV of 1950.

5. After clause (*k*) of sub-section (2) of section 26 of the said Act, the word "and" shall be omitted and the following clause shall be inserted thereafter, namely :—

"(k1) prescribing fees incidental to the disposal of appeals, applications for revision and any other application or petition filed before the Commissioner, the Deputy Commissioner and the Sales Tax Officer; and

6. In Schedule I to the said Act— Amendment of Schedule I, Hyderabad Act XIV of 1950.

(a) in item 15 for the word "cloth" the words "cotton cloth" shall be substituted;

(b) in item 21 the words, letter and figures 'and the Hyderabad Opium Act, 1333 F." shall be omitted: and

(c) after item 21, the following item shall be inserted, namely:—

"21A. Opium, Ganja and Bhang."

7. In Schedule II of the said Act for item No. 9 the following item shall be substituted, namely:— Amendment of Schedule II, Hyderabad Act, XIV of 1950.

"9. Silks including artificial silks and all silk goods but excluding silk thread and silk woven on handloom costing less than Rs. 6 per yard."

THE HYDERABAD (APPLICATION OF CENTRAL ACTS) ACT 1952.

No. XLVIII of 1952.

[Received the assent of the President on the 22nd January 1953.]

An Act to apply to the State of Hyderabad certain Central Acts affecting Hindu and Muslim Law.

WHEREAS it is expedient to apply to the State of Hyderabad certain Central Acts affecting Hindu and Muslim Law; Preamble.

IT is hereby enacted as follows:—

1. (1) This Act may be called the Hyderabad (Application of Central Acts) Act, 1952. Short title, extent and commencement.

(2) It extends to the whole of the State of Hyderabad.

(3) It shall come into force at once.

2. In this Act— Definition.

'appointed day' means the day on which this Act comes into force.

3. The following Acts, namely:— Application of Central Acts to Hyderabad.

(a) The Hindu Inheritance (Removal of Disabilities) Act, 1928 (XII of 1928),

(b) The Hindu Law of Inheritance (Amendment) Act, 1929 (II of 1929),

(c) The Hindu Women's Rights to Property Act, 1937 (XVIII of 1937),

(d) The Dissolution of Musim Marriages Act, 1939 (VIII of 1939),

(e) The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 (XIX of 1946). and

(f) The Hindu Marriage Disabilities Removal Act, 1946 (XXVIII of 1946),

shall, with effect from the appointed day, extend to and be in force in the whole of the State of Hyderabad subject to the modifications mentioned in the Schedule and shall, accordingly, be in force in the said State with effect from the said date in the forms respectively specified in Annexures, A,B,C,D,E and F to the Schedule.

SCHEDULE

The Hindu Inheritance (Removal of Disabilities) Act, 1928 (XII of 1928).

For sub-section (2) of section 1, the following sub-section shall be substitued, namely :—

"(2) It extends to the whole of the State of Hyderabad."

The Hindu Law of Inheritance (Amendment) Act, 1929 (II of 1929).

In sub-section (2) of section 1, for the words and letter "It extends to the whole of India except Part 'B' States," the following shall be substituted, namely :—

"It extends to the whole of the State of Hyderabad."

The Hindu Women's Rights to Property Act, 1937 (XVIII of 1937).

For sub-section (2) of section 1, the following sub-section shall be substituted, namely :—

"(2) It extends to the whole of the State of Hyderabad."

The Dissolution of Muslim Marriages Act, 1939 (VIII of 1939).

For sub-section (2) of section 1, the following sub-section shall be substituted, namely :—

"(2) It extends to the whole of the State of Hyderabad,"

The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 (XIX of 1946).

For sub-section (2) of section 1, the following sub-section shall be substituted, namely :—

"(2) It extends to the whole of the State of Hyderabad."

The Hindu Marriage Disabilities Removal Act, 1946 (XXVIII of 1946).

For sub-section (2) of section 1, the following sub-section shall be substituted, namely:—

"(2) It extends to the whole of the State of Hyderabad."

ANNEXURE A

The Hindu Inheritance (Removal of Disabilities) Act, 1928 (XII of 1928) as modified by the aforesaid Schedule.

An Act to amend the Hindu Law relating to exclusion from inheritance of certain classes of heirs, and to remove certain doubts.

WHEREAS it is expedient to amend the Hindu Law relating to exclusion from inheritance of certain classes of heirs, and to remove certain doubts;

IT is hereby enacted as follows:—

Short title, extent and application.

1. (1) This Act may be called the Hindu Inheritance (Removal of Disabilities) Act, 1928.

(2) It extends to the whole of the State of Hyderabad.

(3) It shall not apply to any person governed by the Dayabagh School of Hindu Law.

Persons not to be excluded from inheritance or rights in joint-family property.

2. Notwithstanding any rule of Hindu Law or custom to the contrary, no person governed by the Hindu Law, other than a person who is and has been from birth a lunatic or idiot, shall be excluded from inheritance or from any right or share in joint-family property by reason only of any disease, deformity or physical or mental defect.

Saving and exception.

3. Nothing contained in this Act shall affect any right which has accrued or any liability which has been incurred before the commencement thereof, or shall be deemed to confer upon any person any right in respect of any religious office or service or of the management of any religious or charitable trust which he would not have had if this Act had not been passed.

ANNEXURE B

The Hindu Law of Inheritance (Amendment) Act, 1929 (II of 1929) as modified by the aforesaid Schedule.

An Act to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate.

WHEREAS it is expedient to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate;

IT is hereby enacted as follows:

Short title, extent and application

1. (1) This Act may be called the Hindu Law of Inheritance (Amendment) Act, 1929.

(2) It extends to the whole of the State of Hyderabad, but it applies only to persons who, but for the passing of this Act, would have been subject to the Law of Mitakshara in respect of the provisions herein enacted, and it applies to such persons in respect only of the property of males not held in coparcenary and not disposed of by will.

Order of succession of certain heirs

2. A son's daughter, daughter's daughter, sister, and sister's son shall, in the order so specified, be entitled to rank in the order of succession next after a father's father and before a father's brother:

Provided that a sister's son shall not include a son adopted after the sister's death.

Savings.

3. Nothing in this Act shall—

(*a*) affect any special family or local custom having the force of law, or

(*b*) vest in a son's daughter, daughter's daughter or sister an estate larger than, or different in kind from, that possessed by a female in property inherited by her from a male according to the School of Mitakshara Law by which the male was governed, or

(*c*) enable more than one person to succeed by inheritance to the estate of a deceased Hindu male which by a customary or other rule of succession descends to a single heir.

ANNEXURE C

The Hindu Women's Rights to Property Act, 1937 (XVIII of 1937) as modified by the aforesaid Schedule.

An Act to amend the Hindu Law governing Hindu Women's Rights to Property.

WHEREAS it is expedient to amend the Hindu Law to give better rights to women in respect of property;

IT is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called the Hindu Women's Rights to Property Act, 1937.

(2) It extends to the whole of the State of Hyderabad.

Application.

2. Notwithstanding any rule of Hindu Law or custom to the contrary, the provisions of section 3 shall apply where a Hindu dies intestate.

3. (1) When a Hindu governed by a Dayabagh School of Hindu Law dies intestate leaving any property and when a Hindu governed by any other School of Hindu Law or by Customary Law dies intestate leaving separate property, his widow, or if there is more than one widow all his widows together, shall, subject to the provisions of sub-section (3), be entitled in respect of property in respect of which he dies intestate to the same share as a son: Devolution of property.

Provided that the widow of a predeceased son shall inherit in like manner as a son if there is no son surviving of such predeceased son, and shall inherit in like manner as a son's son if there is surviving a son or son's son of such predeceased son;

Provided further that the same provision shall apply *mutatis mutandis* to the widow of a predeceased son of a predeceased son.

(2) When a Hindu governed by any School of Hindu Law other than the Dayabagh School or by Customary Law dies having at the time of his death an interest in a Hindu joint-family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had.

(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu women's estate provided however that she shall have the same right of claiming partition as a male owner.

(4) The provisions of this section shall not apply to an estate which by a customary or other rule of succession or by the terms of the grant applicable thereto descends to a single heir or to any property to which the Indian Succession Act, 1925 applies.

4. Nothing in this Act shall apply to the property of any Hindu dying intestate before the commencement of this Act. Savings.

5. For the purposes of this Act, a person shall be deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect. Meaning of expression "die intestate."

ANNEXURE D

The Dissolution of Muslim Marriages Act, 1939 (VIII of 1939) as modified by the aforesaid Schedule,

An Act to consolidate and clarify the provisions of Muslim Law relating to suits for dissolution of marriage by women married under Muslim Law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie.

WHEREAS it is expedient to consolidate and clarify the provisions of Muslim Law relating to suits for dissolution of marriage by women married under Muslim Law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie;

Short title and extent.

It is hereby enacted as follows :—

1. (1) This Act may be called the Dissolution of Muslim Marriages Act, 1939.

(2) It extends to the whole of the State of Hyderabad.

Grounds for decree for dissolution of marriage.

2. A woman married under Muslim Law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely :—

(*i*) that the whereabouts of the husband have not been known for a period of four years;

(*ii*) that the husband has neglected or has failed to provide for her maintenance for a period of two years;

(*iii*) that the husband has been sentenced to imprisonment for a period of seven years or upwards;

(*iv*) that the husband has failed to perform without reasonable cause, his marital obligations for a period of three years;

(*v*) that the husband was impotent at the time of the marriage and continues to be so ;

(*vi*) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;

(*vii*) that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years;

Provided that the marriage has not been consummated ;

(*viii*) that the husband treats her with cruelty, that is to say,—

(*a*) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or

(*b*) associates with woman of evil repute or leads an infamous life, or

(*c*) attempts to force her to lead an immoral life, or

(*d*) disposes of her property or prevents her exercising her legal rights over it, or

(*e*) obstructs her in the observance of her religious profession or practice, or

(*f*) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran;

(*ix*) on any other ground which is recognised as valid for the dissolution of marriages under Muslim Law :

Provided that—

(*a*) no decree shall be passed on ground (*iii*) until the sentence has become final;

(*b*) a decree passed on ground (*i*) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in

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